

CHAPTER 4. No. 1.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY).

Ordinances
Cap. 23—1925.
No. 21—1936.
„ 14—1939,
1st Sch.
Commencement.

AN ORDINANCE RELATING TO PRELIMINARY ENQUIRIES INTO
INDICTABLE OFFENCES BY MAGISTRATES.

[29th May, 1917.]

Short title.

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

Interpre-
tation.

Ord. 14—1939,
1st Sch.

Jurisdiction
of Justices.

2. (1) In this Ordinance “ Court ” means the Supreme Court or a Judge thereof.

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

Compelling
appearance
of accused
person.

3. Any Magistrate may issue a summons or warrant as hereinafter mentioned to compel the appearance before him, for the purpose of preliminary examination, of any person accused of having committed in any place, whether within or without the Colony, any indictable offence triable, according to the law for the time being in force, in the Colony.

Magistrate
may enquire
into
suspected
offence.

4. (1) Any Magistrate who has reason to believe that any indictable offence has been committed within the limits of his jurisdiction, or that there is reasonable ground for enquiring whether such an offence has been committed, or, in either case, that there is reasonable ground for enquiring by whom such suspected offence has been committed, may (whether

any particular person is charged or not) summon to appear before him any person whom he has reason to believe to be capable of giving material evidence concerning such offence, and may examine such person upon oath concerning such offence, and, if he sees cause, bind such person by recognizance to attend and give evidence, if called upon by any Magistrate or by the Court, at any time within the twelve months then next ensuing, unless such person can show some reasonable excuse to the contrary.

(2) In case any person so summoned neglects to attend, or refuses without lawful excuse to take such oath, or, having taken such oath, to answer any question concerning the said offence which may then be put to him, or to enter into such recognizance as aforesaid, 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 to be bound by recognizance to do so, after having been served with a summons for that purpose.

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—

Power to issue search warrant.

Ord. 21-1936, s. 2.

(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 by him dealt with 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,

Detention of articles seized.

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. If no person is committed, the Magistrate shall direct such thing to be restored to the person from whom it was taken, except in the cases hereinafter mentioned, unless he is authorised or required by law to dispose of it otherwise.

Destruction of forged bank notes, etc.

(4) If, 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 enactment 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.

Disposal of counterfeit coin, etc.

(5) If, 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 Ordinance 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 so produced.

Search for and disposal of gun-powder, etc.

(6) 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 protection as are given by any Ordinance 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 same manner as directed by any such Ordinance, or, in default of such direction, as the Commissioner of Police may order.

Complaint.

Reception of complaint.

6. Upon any complaint made to a Magistrate that an indictable offence has been committed by any person whose appearance he has power to compel, such Magistrate 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, as the case may be, in the manner

hereinafter mentioned; and such Magistrate shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant.

Summons to accused person.

7. (1) A Magistrate may issue a summons although there is not any complaint in writing or upon oath.

Issue, contents, and service of summons.

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

(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 met with, by leaving it with some person for him at his last or most usual place of abode.

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

Warrant for apprehension of accused person.

8. (1) If 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. Such 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.
Ord. 21-1936,
s. 3.

(2) The fact that a summons has been issued shall not prevent any Magistrate from issuing such 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 has been 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.

Proceedings on appearance of accused person.

Disposal of person apprehended upon warrant.

9. When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as may be practicable after he is so arrested, and such Magistrate shall either proceed with the preliminary enquiry or postpone such 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 recognizance, according to the provisions hereinafter contained.

Accused may have assistance of legal adviser.

10. Every accused person shall be 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) When 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 any irregularity, illegality, defect, or error in the summons or warrant, or the issuing, service, or execution of the same, and notwithstanding the want of any complaint upon oath, and notwithstanding any defect in the complaint, or any irregularity or illegality in the arrest or custody of the accused person:

Provided that it shall be lawful for such Magistrate, if he thinks that the ends of justice require it, to adjourn the hearing of the case, at the request of the accused person, to some future day, and in the meantime to remand the accused person or admit him to bail:

Provided also, that upon such adjournment, the accused person shall not be committed to prison unless, before his committal, a complaint in writing and upon oath has been taken.

Witnesses.

12. Subject to the provisions of this Ordinance, 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, with the addition that any such witness shall be liable to be dealt with as hereinafter provided for refusing, without reasonable excuse, to sign his deposition or to enter into a recognizance.

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

Local examination and medical inspection.

13. (1) It shall be the duty of the Magistrate holding any preliminary enquiry to make or cause to be made such local inspection as the circumstances of the case may require; and, in any case of homicide or serious injury to the person, to cause the body of the person killed or injured to be examined by some 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 such medical practitioner or other person shall afterwards, if necessary, be taken.

Making of local inspection and examination of injured person.

(2) Every medical practitioner or other person as aforesaid who refuses or neglects, without reasonable excuse, to comply with any order or direction of a Magistrate given under this section shall be liable, on summary conviction, to a fine of forty-eight 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) An adjournment ordered shall be made to a certain time and place: Provided always that, except with the consent of the person remanded and the prosecutor, such adjournment shall be for a period not exceeding ten clear days, or until the next day on which the Magistrate holds a court at the place where such order is made if a court is not to be held there within such ten days.

(3) If 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 such adjournment as is in the last preceding subsection mentioned, such Magistrate may, in the absence of the accused person, order him to be further remanded for such time as may be deemed 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 particular witness should be permitted or required to be present during the whole or any part of the examination of any other of the witnesses.

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

(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 by the Magistrate holding the enquiry by warrant to prison, there to be kept until after the trial or until the witness signs his deposition before a Magistrate: Provided that 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 aforesaid, the Magistrate shall, unless he discharges the accused person, address him in these words, or to the like effect:—

Charging of
accused
person.

“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 holden 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 hereinafter mentioned. 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.
Ord. 21-1936,
s. 4.

(3) Notwithstanding anything in this or in the next succeeding section contained, the Magistrate may, if he thinks

Further
evidence.

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.

Taking of
evidence for
defence.

18. After the proceedings required by the last preceding section 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.

Marking of
exhibits.

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 the same, so that the same may be identified at the trial.

Deposition of
witness
unable to
attend.

20. (1) Where any person able to give 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 such person at the place where such 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) The provisions of section 16 shall, so far as the same are 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 such indictable offence is being, or has been, held, if such deposition was taken by some other Magistrate, and such deposition shall, subject to the provisions of subsection (2) of section 38, be treated in all respects in the same way, and shall be considered for all purposes as a deposition taken upon the preliminary enquiry.

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.

Binding over
to give
evidence.

(2) Every recognizance 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 recognizance may be either at the foot of the deposition or separate therefrom, 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 recognizance may be committed by the Magistrate holding the enquiry by a warrant to prison, there to be kept until after the trial, or until the witness enters into such recognizance before a Magistrate: Provided that if the accused person is afterwards discharged, any Magistrate may order any such witness to be discharged.

(5) Where any 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 with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before him is unnecessary by reason of anything contained in any statement by the accused, or of the accused having pleaded guilty to the charge, or of the evidence of the witness being merely of a formal nature, the Magistrate shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall 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. The Magistrate shall on committing the accused for trial inform him of his right to require the attendance at the trial of any such witness as

Binding over
of witnesses
conditionally.
Ord. 21-1936,
s. 5.

aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(6) The Attorney General 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 such witnesses, and the Attorney General 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 such notice shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance.

Magistrate
may consult
Attorney
General.

22. If 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 Attorney General in such matter.

Discharge ; Committal for trial.

Discharge or
committal
for trial of
accused.

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 sufficient case is made out to put the accused person upon his trial, discharge him; and in such case any recognizance taken in respect of the charge shall become void.

(2) If, upon the whole of the evidence, the Magistrate is of opinion that a sufficient case is made out to put the accused person upon his trial, he shall grant his warrant for the commitment of such 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.

1st Schedule.

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

(4) Provided always, that nothing herein shall be construed to prevent the Magistrate from admitting the accused person to bail if the offence charged be of a bailable nature.

Ord. 21-1936,
s. 6. (5) In every case in which a Magistrate shall discharge an accused person on a preliminary enquiry, he shall, if required so to do by the Attorney General, transmit forthwith to him

the record of the proceedings, and if the Attorney General, on perusing and considering the evidence, shall be 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 a warrant for the arrest and committal for trial of the accused person; and if the Judge shall be of opinion that the evidence, as given before the Magistrate, was sufficient to put the accused person on his trial, it shall be lawful for him to 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 same and the like manner as if he had been committed for trial by the Magistrate by whom he was discharged:

Provided that the requisition to the Magistrate for the record shall be made within three months of the discharge of the accused person and that the application to the Judge for the warrant shall be made within six months of the discharge of the accused person.

(6) 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.

Proceedings subsequent to committal.

24. (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 Attorney General 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 recognizances 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.

(2) Subject to the provisions of this Ordinance, the depositions and other documents received from the Magistrate by the Attorney General 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 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 Attorney General, is disclosed by the depositions.

Attorney
General may
refer back
case for
further
evidence.

25. (1) At any time after the receipt of the depositions and other documents mentioned in the last preceding section, and before the indictment is filed, the Attorney General 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. If 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.

Attorney
General may
refer back
case to be
dealt with
summarily.

(2) If, after the receipt of the depositions and other documents mentioned in the last preceding section, the Attorney General 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 Attorney General 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 Attorney General under this section shall be in writing signed by him, and shall be complied with by the Magistrate: Provided that the Attorney General may at any time add to, alter, or revoke any such directions.

(4) When the Attorney General directs that an enquiry shall be re-opened or that a case shall be dealt with summarily, the following provisions shall have effect, that is to say:—

(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 such accused person to convey him or cause him to be conveyed to the place named in such 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 such summons. If the accused person does not attend in obedience to such summons, the Magistrate shall issue a warrant for his apprehension;

(c) Thereafter the proceedings shall be continued under the provisions of this Ordinance or of the Summary Courts Ordinance, as the case may be, and, if under the last mentioned Ordinance, in the same manner as if the Magistrate had himself formed an opinion in terms of section 91 thereof.

Committal for sentence.

26. (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:—

Accused admitting guilt at preliminary enquiry to be further cautioned and may be committed for sentence.
Ord. 19-1936, s. 5.

“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.”

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

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

(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 Supreme Court, and in the meantime, the Magistrate shall, by his warrant, commit him 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.

Committal for sentence.

(3) The statement of the accused made under this section shall be received in evidence upon its mere production without

Admissibility of statement of accused in evidence.

further proof thereof by the Court before which he is brought for sentence.

Transmission of proceedings and filing of indictment.

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

Bail.

Right of accused to bail.

27. (1) With respect to bail, the following provisions shall have effect—

Cap 23-1925, ss. 26 and 27.

(a) where the offence with which an accused person is charged is a misdemeanor, he shall be admitted to bail as is hereinafter mentioned;

(b) where the offence with which an accused person is charged is a felony, not being treason, murder, or piracy, the Magistrate may, in his discretion, admit him to bail as is hereinafter mentioned; and

(c) a Magistrate shall not admit to bail any person charged with treason, murder, or piracy, or who has been twice previously convicted of felony, whether summarily or on indictment.

(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 felony, upon his own recognizance, 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.

Bail on adjournment.

(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.

(4) If an accused person who has appeared and has been admitted to bail (either on the recognizance of sureties or on his own recognizance) to appear at any adjournment, fails to appear according to the condition of such recognizance, 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 recognizance to be forfeited.

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

28. (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, such 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 such summons is not obeyed, a warrant may issue to enforce his attendance and may be executed like any other warrant.

29. (1) If an accused person who is committed for trial is admitted to bail, the recognizance of bail shall be taken in writing either from the accused person and one or more surety or 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.

Bail on committal for trial.

(2) The condition of such recognizance shall be that the accused person shall personally appear before the Court at any time within twelve months from the date of the recognizance, 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.

2nd Schedule.

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

Conveying
accused to
prison after
committal.

30. (1) If 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 such constable a receipt for the accused person, which shall set forth the condition in which such accused person was when he was delivered into the custody of such Keeper.

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

(3) The provisions of this section shall apply to every person who is committed to prison under any provision of this Ordinance.

Bailing of
accused after
committal.

31. (1) If an accused person who is entitled to be admitted to bail, or if 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.

(2) Any Magistrate attending or being at the prison whilst such accused person is confined therein 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) (a) If it is inconvenient for a surety or sureties to attend at the prison to join the accused in the recognizance of bail, the committing Magistrate may make a duplicate of such certificate.

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

(c) Upon such recognizance and such certificate as is mentioned in paragraph (a) of this subsection being produced to any Magistrate attending or being at such prison, it shall be lawful for him to take the recognizance of the accused party; and thereupon such Magistrate shall order him to be discharged by a warrant of deliverance.

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

Court or Judge may bail accused.

33. Where an accused person has been bailed in manner aforesaid, it shall be lawful for the Magistrate by whom he has been bailed, or for any other Magistrate, 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 such surety, or by some person in his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to 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, to 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.

Apprehension of accused person on bail but about to abscond.

34. 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

Amount of bail.

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.

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

Power to revoke or require higher bail.

36. (1) Where an accused person who has been admitted to bail by a Magistrate is indicted by the Attorney General for an offence which is notailable by a Magistrate, the Magistrate shall, on being informed of the fact by any commissioned officer of Police, 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 Supreme Court.

(3) Where an accused person has been admitted to bail by a Judge of the Court 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 commissioned officer of Police, 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.

Place of commitment.

37. All persons committed to prison under this Ordinance shall be committed to the Royal Gaol in the City of Port-of-Spain, or to such other prison within the district in which they have been committed as may have been appointed by the Governor.

Evidence.

Reading of depositions at trial.
Ord. 21-1936,
s. 7.

38. (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 hereinafter set out 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.

The conditions hereinbefore referred to 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 subsection (5) of section 21, 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 the Colony, or kept out of the way by the prosecutor or the Crown 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) hereof other than paragraph (b) thereof 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 such 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:

Provided that the provisions of this section shall not have effect in any case in which it is proved—

(i) that the deposition, or where the proof required

by paragraph (1) (b) of this section 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

(ii) that where the deposition is the deposition of a witness whose attendance at the trial is stated to be unnecessary as provided by subsection (5) of section 21, the witness has been duly notified that he is required to attend the trial.

Report of
Government
Chemist.

39. (1) At any preliminary examination, any document purporting to be a report from the Government 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.

Ord. 21-1936,
s. 8.

40. (1) It shall not be lawful to print or publish or cause or procure to be printed or published, in relation to any preliminary enquiry under this Ordinance, any particulars other than the following, that is to say:—

(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:

Provided that nothing herein 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.

Penalties.

(2) If any person acts in contravention of the provisions of this section, he shall in respect of each offence be liable, on summary conviction, to imprisonment for four months, or to a fine of two hundred and forty dollars.

SCHEDULES.

FIRST SCHEDULE.

Warrant of Commitment.

(Section 23.)

To (Constable), and to , Keeper of the Royal Gaol.

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 Royal Gaol 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 Royal Gaol, to receive the said A. B. into your custody in the said Royal Gaol and there safely keep him until he shall be thence delivered by due course of law.

Date

(Magistrate).

SECOND SCHEDULE.

Recognizance of Bail on Committal.

(Section 29.)

OUR SOVEREIGN LORD THE KING.

Against

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

At in the said Colony, on this day of in the year of our Lord one thousand of in the said Colony, acknowledges himself to be indebted to our Sovereign Lord the King, in the sum of , and of acknowledges himself to be indebted to our Sovereign Lord the King, in the sum of ; upon condition that, if the said do personally appear before the Supreme Court, in the town 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 situate in in the town of and that the said in the meantime be of good behaviour, and keep the peace towards the King and all his liege subjects, and especially towards then this recognizance to be void; or else to remain in full force. And the said severally acknowledge themselves debtors in solidum to our Sovereign Lord the King in the sums hereinbefore respectively acknowledged by them upon the property of them and each of them, to the use of our said Lord the King, to be levied in due form of law, in case of default made in the condition of this recognizance or obligation.

Acknowledged by the said on the day of , 19 .

Witness Before me,