

*See 4, 1921*

## CHAPTER 23.

### INDICTABLE OFFENCES (PRELIMINARY ENQUIRY).

*Ordinances*  
No. 12 of 1917,  
,, 48 of 1920,  
,, 5 of 1923.

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

[29th May, 1917.]

Short title.

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

Interpretation.

2. In this Ordinance—

“ Court ” means the Supreme Court or a Judge thereof;

“ Magistrate ” includes a Justice;

“ Constable ” includes any member of the Constabulary Force.

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.

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed ~~for which, according to any Ordinance for the time being in force, the offender may be arrested without warrant; or~~ 21/1936  
S. 2.
- (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, ~~for which, according to any Ordinance for the time being in force, the offender may be arrested without warrant,~~ 21/1936  
S. 2.

may at any time issue a warrant under his hand authorizing 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.

Detention of articles seized.

(3) When any such thing is seized and brought before any Magistrate, he may detain 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. 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 authorized 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 Inspector-General or to any person authorized 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 gunpowder, 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 authorized 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 Inspector-General 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.

Issue of warrant of apprehension in first instance.

2/36  
sic 3.

*Such warrant may be issued on a Sunday at any time and may be issued and executed on a Sunday.*

(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 provisions of 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 before a Magistrate, to a penalty not exceeding ten pounds.

*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 sub-section 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 used against you at your trial. And I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been 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 against you, notwithstanding such promise or threat.”

Repealed  
+ substituted  
by 21 of 1936

See 4.

used  
in

Witness

8647

(2) Whatever the accused person then says in answer thereto 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.

Statement.

(3) Notwithstanding anything in this or in the next succeeding section contained, 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.

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 of this Ordinance 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 sub-section (2) of section 38 of this Ordinance, 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 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. *s. s (5) and (6). added by 21/1936. S. 5*

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.

Magistrate  
may consult  
Attorney-  
General.

*Discharge; Committal for Trial.*

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.

Discharge or  
committal  
for trial of  
accused.

(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.

(3) The commitment shall be in the Form in the First Schedule to this Ordinance.

(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. *s. s. (5) and (6) added by 21 of 1936. S. 6.*

*Proceedings subsequent to Committal.*

Transmission and custody of documents and exhibits relating to a case.

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 Constabulary and shall be produced by them at the trial.

(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. (*Substituted by 5 of 1923, s. 2.*)

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 Conviction Offences (Procedure) 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. (*Added by 5 of 1923, s. 3.*)

Cap. 24.

#### *Bail.*

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

- (a) Where the offence with which an accused person is charged is a misdemeanor,

Right of  
accused to  
bail.

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:

27. (1) 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.

(2) 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.

(3) 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.

(3) The recognizance may be in the Form in the Second Schedule to this Ordinance.

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 sub-section 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 by whom the order for the taking of such bail is made, but no accused person shall be required to give excessive bail.

Amount of  
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 not bailable by a Magistrate, the Magistrate shall, on being informed of the fact by any commissioned officer of the Constabulary Force, 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 the Constabulary Force, 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. (Added by 48 of 1920, s. 3.)

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.

When depositions may be given in evidence.

38. (1) A deposition taken under this Ordinance against or for any person accused of an indictable offence may be produced and given in evidence at the trial of the person

*repealed by 42 of 1924 which was done*

against or for whom it was taken, if it is proved, to the satisfaction of the Court—

- A New section 38 created by 21 of 1936 S. 7.*
- (a) that the deponent is absent from the Colony; or
  - (b) that the deponent is dead, or so ill as not to be able to travel, although there may be a prospect of his recovery; or
  - (c) that the deponent is kept out of the way by the prosecutor or the Crown or by the accused person; or
  - (d) that the deponent is, in consequence of his condition of mind, incapable of giving evidence; and
  - (e) that the deposition purports to be signed by the Magistrate by whom it purports to have been taken; and
  - (f) that it 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 a full opportunity of cross-examining the deponent.

(2) In the case of a deposition taken under section 20 of this Ordinance, the provisions of the last preceding sub-section other than paragraph (f) thereof shall apply on its being proved to the satisfaction of the Court—

- (i) 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
- (ii) 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) If the deposition purports to have been taken and signed as aforesaid, it shall be presumed, in the absence of evidence to the contrary, to have been duly taken and signed.

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

Report of  
Government  
Analyst.

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.

S. 40 added by 21 of 1936. S. 8.

### FIRST SCHEDULE.

(Section 23.)

#### WARRANT OF COMMITMENT

To  
and to  
Gaol.

(Constable),  
, Keeper of the Royal

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.

(Section 29.)

#### RECOGNIZANCE OF BAIL ON COMMITTAL.

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 \_\_\_\_\_ pounds; 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

one thousand

Witness

Before me,