

# DISTRICT AND INTERMEDIATE COURTS (CRIMINAL JURISDICTION)

Cap 174 – 5 November 1888

Amended 11/07; 36/08

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## 1 Short title

This Act may be cited as the District and Intermediate Courts (Criminal Jurisdiction) Act.

## 2 Interpretation

(1) In this Act –

“clerk” means –

- (a) in relation to the Intermediate Court, the Head Clerk;
- (b) in relation to a District Court, the District Clerk;

“fine” includes all pecuniary penalties;

“imprisonment” means imprisonment with or without hard labour;

“Judge” means a Judge in Chambers;

“oath” includes solemn affirmation or declaration where a solemn affirmation or declaration may by law be received in place of an oath;

“offence” means any breach of the law for which a penalty is provided;

“officer” means any officer, non commissioned officer or constable of police and includes special constables;

“Registrar” includes any clerk of the Registry having authority to act for the Registrar.

(2) The provisions of this Act (other than Part II and sections 110, 111 and 112) relating to the trial of a criminal case before a District Court shall apply, *mutatis mutandis*, to the trial of a criminal case before the Intermediate Court and the powers conferred or the duties imposed on a District Magistrate by any enactment are also conferred or imposed, as the case may be, on the Intermediate Court or any Magistrate of the Intermediate Court.

## 3 Non-application to other islands

- (1) This Act shall apply only to the Island of Mauritius.
- (2) Flat Island and Gabriel Island shall be deemed part of the District of Rivière du Rempart.

## **PART I – PROCEEDINGS TO OBTAIN THE ATTENDANCE OF A PARTY CHARGED BEFORE THE MAGISTRATE**

### **4 Issue of warrant**

(1) (a) Where a charge or complaint is made on oath before a Magistrate in Form A of the Second Schedule that a person has committed or is suspected of having committed an offence punishable otherwise than by a fine, the Magistrate may issue a warrant in Form B of the Second Schedule to apprehend such person and to cause such person to be brought before him or any other Magistrate of the district to answer such charge or complaint and to be further dealt with according to law.

(b) In all such cases the Magistrate may, if he thinks fit, instead of issuing a warrant in the first instance, issue a summons in Form C of the Second Schedule directed to such person.

(2) Where any person after being served with any such summons fails to appear at the time and place mentioned in the summons, the Magistrate may issue his warrant to apprehend such person.

### **5 Warrant for offence committed elsewhere**

A Magistrate may grant a warrant for the apprehension of a person suspected of having committed an offence for which a warrant may issue in another district.

### **6 Warrants may be issued on holidays**

A Magistrate may grant or issue any warrant or any search warrant on a holiday as well as on any other day.

### **7 Contents of warrant**

(1) Every warrant shall be under the hand of the Magistrate issuing the same, and may be directed to any police officer by name or generally to all police officers.

(2) It shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person to whom it is directed to apprehend the offender and bring him before the Magistrate issuing the said warrant or any other Magistrate of the district.

(3) Such warrant shall remain in force until it is executed.

### **8 No objection allowed to warrant**

(1) Subject to subsection (2), no objection shall be taken or allowed to be taken to any such warrant for any defect therein in substance or in form or for any variance between it and the evidence.

(2) Where any such variance appears to the Magistrate to be such that the party charged has been deceived or misled, the Magistrate may, at the request of the party charged, adjourn the hearing of the case to some future day and in the meantime remand the party charged or admit him to bail.

### **9 When and where warrant may be executed**

(1) A warrant may be executed by any officer in any district in which the party charged is found, and on any day or at any time of the day or night.

(2) Every person shall, under a penalty not exceeding 100 rupees, assist a police officer who demands his aid in the arrest of a person charged with a crime, the suppression of any affray or the arrest of the affrayers.

(3) An arrest shall be made by some actual touching or confining of the body.

### **10 Officer not bound to exhibit warrant**

An officer executing a warrant need not exhibit the warrant unless required to do so by the party arrested.

#### **11 Means of effecting the arrest**

Where after notice by an officer authorised by warrant to arrest a person, such person either flees or forcibly resists the officer, the officer shall use all such means as may be necessary to effect the arrest and prevent the escape.

#### **12 Officer may open doors and windows**

(1) Any officer authorised by a warrant to arrest any party charged with a crime or misdemeanour may open any door or window of a dwelling-house in order to execute such warrant, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

(2) The officer shall show his warrant if required to do so.

#### **13 Treatment of party arrested**

(1) After an arrest, the officer shall bring the party arrested to the gaol or before the Magistrate according to the import of the warrant.

(2) Where the arrest takes place in a district other than the one in which the warrant was issued, the officer shall bring the party arrested as soon as possible before the Magistrate who issued the warrant, or may remand him to the custody of the officer to be brought before such Magistrate.

(3) The order of the Magistrate so bailing or remanding the prisoner shall be endorsed on the warrant.

#### **14 Where party not brought before Magistrate**

Where circumstances render it impracticable to bring the person arrested before a Magistrate immediately, the officer shall detain such person in his custody in the meantime, and bring him before the Magistrate as soon as such a course is reasonably practicable.

#### **15 No inducement to be offered to prisoner**

(1) An officer after the arrest of a person shall not offer him any inducement by threat, promise or otherwise to make any disclosure, but shall inform him of the cause of his arrest and leave him free to speak or keep silent.

(2) Where the prisoner is brought before the Magistrate, he shall be deemed to be in the custody of the officer until he is discharged, bailed, or committed to prison.

#### **16 Arrest by private person**

A private person who sees a crime committed or attempted to be committed or a dangerous wound given, may, without warrant, arrest the offender.

#### **17 Person found stealing**

Where any person is found committing a larceny or otherwise fraudulently taking, obtaining, converting or receiving, or maliciously injuring any property when such offence would be punishable by imprisonment, he may be immediately, or on fresh pursuit made, apprehended without a warrant, by any officer or by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorised by him, and forthwith taken before the Magistrate to be dealt with according to law.

#### **18 Person to whom property offered may arrest**

(1) Where any property is offered to be pawned, pledged, exchanged, sold or delivered to any person, if the party so offering the same is unable or refuses to give a satisfactory account of himself, or of the means by which he became possessed of such property, or if the person to whom the property is offered, has any other reasonable cause to suspect that the same has been stolen or otherwise obtained by means of a crime or a misdemeanour, such person may apprehend and forthwith carry before the Magistrate the party so offering such property together with such property, or he or his servants, or agents, to whom such property are so offered, may

seize and detain the party so offering the same, as well as the property, and deliver such party as soon as conveniently may be into the custody of an officer, who shall immediately convey such person and the property before the Magistrate and in either case such party shall and may be thereon proceeded with in the manner prescribed.

(2) Where the property so carried, or seized and detained, afterwards appears to be the property of the person who offered the same to be pawned, exchanged, sold or delivered, or that he was authorised by the owner to pawn, pledge, exchange, sell or deliver the same, the person who apprehended, seized, or detained the party who offered the property, shall be indemnified for having done so.

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**20 Cause of arrest to be notified to prisoner**

A private person who apprehends any other person without a warrant shall, prior to the arrest, notify to the party the cause for which he arrests, and shall require him to submit, except where the party is in the actual commission of any offence, or where fresh pursuit is made after any such party who, being disturbed, makes his escape.

**21 Prisoner to be taken before Magistrate**

A private person who without warrant lawfully arrests another on any charge, shall take him within the shortest time possible for that purpose before the nearest Magistrate, or shall deliver him into the hands of an officer.

**22 Arrest by officer without warrant**

An officer may arrest a party without warrant, in all cases where a private person may so arrest, and also on a reasonable charge made of a crime committed or of dangerous wounds inflicted by the party arrested.

**23 Security for keeping the peace**

(1) Any police officer, not below the rank of Assistant Superintendent, who has reasonable ground to suspect that any person –

- (a) has the intention of committing a breach of the peace against any particular person or against any person unknown;
- (b) is likely to commit any act which may lead to a breach of the peace or threaten public safety or public order,

may cause that person to be arrested and brought before a Magistrate.

(2) Where a person is brought before a Magistrate under subsection (1) and the Magistrate, after hearing evidence on oath, is satisfied that it is necessary –

- (a) in the interests of public safety or public order; or
- (b) for keeping the peace or maintaining good behaviour,

that the person should furnish security, he shall order accordingly.

(3) Any security that may be ordered to be taken from any person under subsection (2) shall be in his own recognisance and that of one or more persons as sureties on his behalf to the satisfaction of the Magistrate, in any reasonable sum to the intent that, for a reasonable time to be stated in the order, the person shall keep the peace and be of good behaviour.

(4) Where a person does not furnish the security as required under subsection (3) the Magistrate shall commit him to prison for a term not exceeding 3 months.

(5) Where any Magistrate, after hearing any person bound by a recognisance under subsection (3), and his sureties, or upon their failure to appear after they have been summoned, finds that the person bound has not kept the peace or been of good behaviour, he shall order the forfeiture of the recognisance and execution on the recognisance shall issue

(6) Where any person has been brought before a Magistrate under subsection (1) and the Magistrate is for any reason, unable to reach a decision on the same day, he shall direct that the person be detained pending his decision unless the person furnishes such reasonable security in his own recognisance and that of one or more persons as sureties on his behalf, as

the Magistrate may direct, to keep the peace and be of good behaviour until the Magistrate reaches a decision in the case.

(7) (a) Where a Magistrate has made an order under this section, directing that a person should furnish security and that person has given notice of appeal against the order, the Magistrate shall require him to furnish such reasonable security in his own recognisance and that of one or more persons as sureties on his behalf, as the Magistrate may direct, to keep the peace and be of good behaviour until the Supreme Court has decided on the appeal.

(b) Unless and until the security under paragraph (a) is furnished, the Magistrate shall direct that the person be detained pending the decision of the Supreme Court.

(8) Any security ordered to be furnished under this section shall not be less than 10,000 rupees.

[Amended 30/91; 5/99]

#### **24 Officer may break open door of house**

An officer may break open any door or window of a dwelling house, in case of an actual affray in such house if after notification of his office and purpose and demand of admission duly made, he cannot otherwise obtain admittance.

#### **25 Arrest without warrant**

An officer may between sunset and sunrise arrest any person whom he has just cause to suspect of having committed or of intending to commit a crime, or any idle or disorderly person whom he may find disturbing or being about to disturb the public peace, or lying or loitering in a public place or street, or any yard or other place, and not being able to give a satisfactory account of himself.

#### **26 Person who assaults an officer**

An officer may apprehend any person who assaults him while he is in the execution of his duty and take him before a Magistrate.

#### **27 Prisoner to be taken before Magistrate**

An officer arresting any party in conformity with any of the above provisions, or to whom a party lawfully arrested by a private person without warrant is delivered, as soon as possible, take such party before the Magistrate.

#### **28 Officer to notify his authority**

(1) An officer proceeding to arrest without warrant shall, unless the party intended to be arrested is otherwise acquainted with it, notify his authority.

(2) Such notification is not necessary where the party is in the actual commission of any offence or where fresh pursuit is made after any such party who, being discovered, makes his escape.

#### **29 Arrest by word of mouth**

Where an offence is committed in the presence of a Magistrate, he may, by word of mouth, command any person to arrest the offender, and may thereupon commit him, or, where the offence is bailable, admit him to bail.

#### **30 Warrant to search for stolen goods**

(1) A Magistrate who has authority to issue his warrant of arrest on a charge of larceny, may also, upon sufficient grounds for suspecting that goods charged in any information as having been stolen are concealed or are supposed to be concealed in any dwelling house or other premises, grant his warrant to search for the same.

(2) (a) Such warrant shall be limited to a search in the day time.

(b) In case of great emergency, and where the information is positive, and not on suspicion only, the warrant may be executed at any time.

**31** –

#### **32 Arrest of occupier**

The warrant may also direct the arrest of the occupier of the dwelling house in which the goods are found, or of the person having the goods in his custody.

**33 Goods and dwelling to be specified**

Such warrant must specify the goods which are the object of search, and the dwelling house or other premises where they are concealed or suspected to be concealed.

**34 Power of entry**

(1) The officer charged with the execution of the warrant may lawfully enter any such dwelling-house or premises with his assistants to execute the warrant, and they are justified in making search as directed by the warrant although the goods are not found.

(2) Where the door is shut, the officer may proceed to break open the door, if after notification of his office and purpose and demand of admission duly made he is otherwise unable to obtain admittance.

**35 Prosecution if goods have been stolen**

(1) Where on examination it appears that the goods were not stolen, they shall be restored to the possessor.

(2) Where it appears that they were stolen, they shall be seized and delivered to the bearer of the warrant so that the offender may be prosecuted and restitution made to the party entitled, pursuant to the order of the Magistrate.

**36 Warrant on oath of credible witness**

Where a credible witness proves, on oath before a Magistrate, reasonable cause to suspect that any person has in his possession any property which has been obtained by means of a crime or misdemeanour or any arm or instrument used in the commission of a crime or misdemeanour, the Magistrate may grant a warrant to search for such property, arm or instrument as in the case of stolen goods.

**37 Search for stolen property**

Any constable may, under the circumstances mentioned in section 39, be authorised in writing by a Magistrate to enter, and if so authorised may enter any house, shop, warehouse, yard, or other premises, in search of stolen property, and search for and seize and secure any property he believes to have been stolen, in the same manner as he would be authorised to do if he had a search warrant and the property seized, if any, corresponded to the property described in such search warrant.

**38 Summons before Magistrate**

Where property is seized under section 37, the person on whose premises it was at the time of the seizure, or the person from whom it was taken, if other than the person on whose premises it was, shall, unless previously charged with having been found in possession of the same without sufficient excuse or justification, or with receiving the same knowing it to have been stolen, be summoned before the Magistrate of the district in which such premises are situate, to account for his possession of such property, and the Magistrate shall make such order respecting the disposal of such property, and may award such costs as the justice of the case may require.

**39 Powers of the Magistrate**

(1) Any Magistrate may give the authority described in section 37 where the premises to be searched –

- (a) are, or within the preceding 12 months have been, in the occupation of any person who has been convicted of having been in possession of stolen property, or of receiving stolen property, or of harbouring thieves;
- (b) are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty, and punishable by penal servitude or imprisonment.

(2) It shall not be necessary for the Magistrate, on giving such authority, to specify any particular property, but he may give such authority where he has reason to believe generally that such premises are being made a receptacle for stolen goods.

#### **40 Summons to issue**

(1) Where a charge or complaint in Form A of the Second Schedule is made on oath before a Magistrate that any person has committed or is suspected of having committed an offence punishable by a fine, the Magistrate shall not in the first instance issue a warrant, but he may issue a summons in Form C of the Second Schedule to the party charged.

(2) The summons shall be signed by the Magistrate, state the substance of the charge or complaint, and direct the party charged to appear before the Magistrate of the district at a time and place specified.

(3) The summons may be served by any usher or officer and shall be served on the party charged personally, or a copy of it shall be left at his residence.

(4) Where such party fails to appear in obedience to the summons, or where the usher returns to the Magistrate that he is not able to effect service, the Magistrate may issue a warrant for his arrest.

(5) The Magistrate may issue a warrant to apprehend persons charged with keeping gambling houses.

#### **41 No objection to summons**

No objection shall be allowed to the summons for any alleged defect in substance or in form, or for any variance between such summons and the evidence adduced in support of the charge.

#### **42 Where defendant appears on notice**

(1) Nothing in this Act shall render the service of a summons necessary in any case of contravention where the party charged appears voluntarily before the Magistrate to answer the charge on notice given to him by the officer or other person prosecuting.

(2) On the voluntary appearance of the party charged the Magistrate may proceed to hear the case in the same manner as if the party had been previously served with a summons.

#### **43 Information by DPP**

(1) An information by the Director of Public Prosecutions may not be laid upon oath.

(2) Where an information signed by the Director of Public Prosecutions is laid before the Magistrate and a requisition made to him in the name of the Director of Public Prosecutions for the issue of a warrant or summons, the Magistrate may issue a warrant or summons in accordance with such requisition.

### **PART II – PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL**

#### **44 Magistrate may inquire and commit for trial**

Where a person is before a Magistrate, on a charge of having committed an offence for which the Magistrate has no jurisdiction to convict under section 116 of the Courts Act, the Magistrate may inquire into the charge and commit the party charged for trial.

#### **45 Information and depositions**

(1) The Magistrate shall, as soon as the nature and circumstances of the case permit, proceed to take the information on oath of the complainant in Form A of the Second Schedule (if no complaint has been previously made), and the depositions of those who know the facts and circumstances of the case.

(2) The depositions shall be taken in presence of the accused person who may put questions to any witness produced against him.

#### **46 Depositions – how taken**

The witnesses shall be examined apart from each other, and their depositions shall be taken down in writing, by one of the clerks, read over to the witness and shall be signed by the witness, the Magistrate and clerk and in case of refusal or incapacity of the witness, the fact shall be recorded by the Magistrate and clerk.

#### **47 When depositions may be used as evidence**

(1) Where on the trial of such accused person, it is proved that any witness, whose deposition has been taken is dead or so ill as not to be able to travel, or has left the Island of Mauritius and there are no reasonable expectations of his speedy return, and also if it is proved that such deposition was taken in presence of the accused and that he or his barrister or attorney had a full opportunity of cross-examining the witness, then where such deposition purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution without further proof of it, unless it is proved that the deposition was not in fact signed by the Magistrate purporting to sign the same.

(2) This provision shall apply to the trial of an accused person by a Magistrate or an Intermediate Court for an offence within the jurisdiction of such Magistrate or Intermediate Court.

#### **48 Recognisance to give evidence at trial**

(1) The Magistrate may bind by recognisance any witness to appear at the next sitting of the Supreme Court at which the trial is intended to be held, then and there to give evidence against the party accused.

[Amended 11/07]

(2) Where any such witness refuses to be bound by recognisance the Magistrate may by his warrant commit such witness to prison until after the trial of such accused party.

(3) Where afterwards from want of evidence or other cause, the Magistrate does not commit such accused party for trial, the Magistrate shall order such witness to be discharged.

#### **49 Documents and articles to be marked**

The Magistrate shall cause all writings and other articles exhibited before him by any witness, to be inventoried or sealed and labelled or otherwise marked in the presence of the person producing the same, so that the same may be identified at the trial.

#### **50 Inspections and post-mortem examinations**

(1) The Magistrate shall make or cause to be made such local inspections as circumstances may require and may make or cause to be made any examination of the person of the accused as circumstances may require.

(2) In a case of homicide a Magistrate may order the performance of a post-mortem examination, and, for the purpose of such examination, may order the body of any person who has already been interred to be disinterred.

#### **51 Warning to accused**

(1) After the examination of the witnesses for the prosecution has been completed the Magistrate shall say to the accused these words or words to the like effect –

Having heard the evidence, do you wish to say anything in answer to the charge. You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial, and you are also 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 whatever you shall now say may be given in evidence against you upon your trial, notwithstanding such promise or threat.

(2) Whatever the accused shall then say shall be taken down in writing and read over to him and shall be signed by the Magistrate, and afterwards on the trial of the accused the same may be given in evidence against him, without further proof, unless it is proved that the Magistrate purporting to sign the same did not in fact sign the same.

(3) Nothing in this Act shall prevent the prosecutor giving as evidence any admission, confession or other statement of the accused made at any time, which by law is admissible as evidence against him.

**52 Witnesses may be called by accused**

(1) (a) The Magistrate before committing any accused person for trial shall demand and require of such person whether he desires to call any witness, and if such person calls or desires to call any witness, the Magistrate shall in his presence, and in the manner provided for taking the depositions of witnesses against the accused, take the deposition both examination and cross examination of those who shall be called as witnesses and know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of such accused person, and shall put the same in writing.

(b) Such depositions shall be read over to and signed by the witnesses and shall be signed by the Magistrate, and otherwise dealt with as depositions of the witnesses against the accused.

(2) Any such witness who, not being a witness merely to the character of the accused, in the opinion of the Magistrate gives evidence in any way material or tending to prove the innocence of the accused shall be bound by recognisance to appear and give evidence at the trial.

(3) At the trial all enactments relating to depositions of witnesses for the prosecution shall be applicable to depositions hereby directed to be taken.

**53 Interpreter to be sworn**

(1) Where an interpreter is employed for the purpose of translating a deposition or a statement made by the accused, such interpreter shall previously be sworn or solemnly affirmed faithfully to translate, unless he is a clerk or official interpreter attached to the Court.

(2) Where a deposition or a statement has been translated, and the translation taken in writing, such deposition or statement before being signed as above required shall be again interpreted to the witness or the accused in the language in which such witness or accused has spoken.

**54 Adjournment of inquiry**

(1) Where from the absence of witnesses or any other reasonable cause it becomes necessary or advisable to defer the examination or the further examination of the witnesses the Magistrate may, either by his warrant remand the party charged to prison for such time as he thinks reasonable, or verbally order the officer in whose custody the accused party is, or any other officer, to continue to keep such person in his custody and to bring him before the Magistrate at the time appointed for continuing the examination.

(2) The Magistrate may order the accused to be brought before him at any time before the expiration of the time for which the accused has been remanded to prison or to the custody of an officer.

**55 –**

**56 Holding of inquiry**

(1) An inquiry under this Act shall, subject to this section, be held by the Magistrate in open Court, but the Magistrate may, where he thinks it advisable in the interests of justice, order that no person shall have access to or remain in Court during the proceedings or any part of them.

(2) (a) Where it is established to the satisfaction of the Magistrate that a witness is unable, through illness or any other good and sufficient cause, to attend Court, the Magistrate may proceed to any place, whether inside or outside his district, for the purpose of taking the deposition of such witness.

(b) No such deposition shall be taken unless the accused is present.

(3) Nothing in this section shall prevent the taking of a dying declaration in the absence of the accused.

#### **57 Discharge or commitment of accused**

(1) (a) Where at the close of the inquiry after hearing the evidence the Magistrate is of opinion that the evidence is not sufficient to put the accused party on trial for any offence, the Magistrate shall order the accused party to be discharged.

(b) Where the Magistrate is of opinion that the evidence is sufficient to put the accused on his trial for an offence not within the summary jurisdiction of the Court, or the evidence given raises a strong or probable presumption of the guilt of the accused, the Magistrate shall by his warrant commit him to prison for trial before the Supreme Court.

(2) (a) Where it appears to the Magistrate that the accused has committed an offence other than that with which he was charged, or that the evidence is sufficient to put him on his trial for such other offence, the Magistrate may commit the accused for trial for such other offence, provided it is one in respect of which a Magistrate may commit for trial.

(b) Where it appears to the Magistrate that the evidence is sufficient to put the accused on his trial for an offence within the jurisdiction of the Magistrate, the Magistrate may proceed as provided in Part III of this Act and section 114 of the Courts Act.

#### **58 Discharge no bar to new charge**

Where the Magistrate discharges the accused, the discharge shall not have the effect of an acquittal, and such person may be charged again with the same offence.

#### **59 When commitment not deemed invalid**

A warrant of commitment shall not be invalid if it shows, with reasonable certainty, that the person to whom it is directed has authority to receive and keep the prisoner, that the prisoner is committed for some offence of which he is accused or suspected, and in respect of which he may lawfully be committed and kept as directed by such commitment, and if it states the time of making such commitment, shows the place where it is made, either by statement in the body or in the margin of the warrant, and is signed by the Magistrate, or bears the seal of the District Court.

#### **60 Effect of informality in commitment**

(1) Where the commitment is informal, a prisoner is not to be discharged by any court but he may be put on his trial if the substance of the offence charged appears in the depositions returned to the Court.

(2) A commitment defective for omitting the cause for which a party is to be imprisoned, is not void so as to render the officer or gaoler who acts upon it, a trespasser, or to excuse an escape.

#### **61 Bail after commitment**

(1) The Magistrate may, after committing a person for trial, admit such person to bail, with the prior consent of the Director of Public Prosecutions.

(2) A Judge may, after reference to the Director of Public Prosecutions, admit any person committed for trial to bail.

(3) After the recognisance has been duly entered into, the Judge or Magistrate, where the accused has appeared voluntarily or is in the custody of some officer, shall discharge him, and where he is in prison or other place of confinement, shall issue an order for his discharge to the gaoler or other person having him in his custody who shall thereupon release him.

#### **62 Documents sent to Director of Public Prosecutions**

(1) Where the Magistrate commits for trial, he shall transmit to the Director of Public Prosecutions all the informations, depositions, statements, recognisances and other documents in the case, except the articles of evidence which shall remain in the custody of the clerk to be produced by him at the trial.

(2) The Director of Public Prosecutions may at any time call for and examine articles of evidence in the custody of the clerk.

**63 Director of Public Prosecutions may require inquiry reopened**

(1) After a commitment the Director of Public Prosecutions may, where he thinks necessary, require a Magistrate to reopen the inquiry.

(2) (a) Thereupon if the accused has been committed to prison he shall be again brought before the Magistrate, and if he has been released on bail, and does not appear voluntarily on notice given to him by order of the Magistrate, the Magistrate may issue a warrant for his arrest.

(b) In making such further inquiry the Magistrate shall have and may exercise all the powers given by this Act.

(3) Subject to subsection (4), the commitment already pronounced, and any recognisance already entered into for the appearance of the accused before the Supreme Court, will not be deemed invalid by reason of the inquiry being reopened.

(4) At the end of such further inquiry the Magistrate may commit for any additional or new charge disclosed by the evidence, and may at any time require new bail, and in default of such further bail being given may commit the accused to prison.

**64 Director of Public Prosecutions may require inquiry into crime**

(1) The Director of Public Prosecutions may also require a Magistrate to proceed to inquiry and examination into any offence, and on such requisition the Magistrate shall proceed as above provided, whether or not such offence is one of the offences mentioned in section 116 of the Courts Act, and whether or not such offence was committed within his district.

(2) The Director of Public Prosecutions may also require in all criminal cases from any Magistrate or officer any further and additional information, inspection or examination or such other legal matters and proceedings as may be necessary.

**65 After commitment**

(1) After a commitment the Director of Public Prosecutions may, after examining the depositions, file an information before the Magistrate or Intermediate Court for any crime within the jurisdiction of the Magistrate or Intermediate Court.

(2) (a) The accused may before pleading to such information, move a Judge in Chambers for an order staying proceedings on such information.

(b) Notice of such application shall be given to the Director of Public Prosecutions.

(3) Where the Judge after examining the record of the preliminary inquiry is satisfied that the evidence discloses an offence which the Magistrate or Intermediate Court has no jurisdiction to try, he may order proceedings on such information to be stayed, whereupon the Director of Public Prosecutions may proceed on the commitment as if no such information had been filed.

**PART III – SUMMARY JURISDICTION**

**66 Magistrate to sit in open court**

(1) The place where a Magistrate sits to hear and try any charge shall be deemed an open and public court to which the public generally may have access so far as the same can conveniently contain them.

(2) The party charged shall be admitted to make his full answer and defence to the charge and to have the witnesses examined and cross examined by barrister or attorney on his behalf, and every complainant shall be at liberty to conduct such information and have the witnesses examined and cross-examined by barrister or attorney on his behalf.

**67 Where information not previously taken**

Where the accused has been arrested or appears without an information having been previously laid, the Magistrate shall before hearing the case take the information of the complainant in Form A of the Second Schedule.

#### **67A Information**

(1) An information lodged before the Intermediate Court may contain any number of counts.

(2) An information lodged before a District Court may contain any number of counts not exceeding 3.

(3) Where the Intermediate Court or a District Court is satisfied that by a joinder of counts in an information an accused may be prejudiced in his defence, the Court may restrict the prosecutor to the proof of one or more of the counts against the accused as the Court thinks just.

(4) The Court may find an accused guilty of any lesser offence included in the offence charged, and acquit him of the rest of the charge, or may convict on one or several counts and acquit on the others.

(5) Where an accused is convicted on 2 or more counts of an information the penalties inflicted on the counts shall not together exceed the maximum penalty which the Court is empowered to inflict.

#### **67B Bail on application for certiorari**

Where a person convicted and sentenced to imprisonment or penal servitude by the Intermediate Court or a District Court makes application to the Supreme Court for an order of certiorari to remove the proceedings of the Court into the Supreme Court, a Judge may release that person from custody upon his entering into a recognisance in such sum with or without sureties as the Judge may determine conditioned for his appearance, within 3 days after the judgment of the Supreme Court, before the Court which had convicted or sentenced him unless the conviction or sentence is quashed by the Supreme Court.

[Amended 4/99]

#### **67C Supreme Court may vary sentence on certiorari**

(1) Where the Intermediate Court or a District Court has convicted and sentenced a person for an offence and the Supreme Court on certiorari determines that the Court had no power to pass the sentence, the Supreme Court may, instead of quashing the conviction, amend it by substituting for the sentence imposed any sentence which the Court had power to impose.

(2) Any sentence imposed by the Supreme Court under subsection (1) shall, unless the Supreme Court otherwise directs, begin to run from the time when it would have begun to run if it had been imposed by the Intermediate Court or the District Court, as the case may be, and in computing the term of the sentence any time during which an offender is at large on bail under section 67B shall be disregarded.

(3) Subsections (1) and (2) shall apply, *mutatis mutandis*, in relation to any order of a Court which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.

#### **68 Where Magistrate may hear the charge**

(1) Where the accused is brought or appears before the Magistrate, the Magistrate may proceed to hear the charge if the accused does not require further time to answer it, or he may adjourn the hearing to some future day, and if the accused has been arrested he may take bail for his appearance on the day appointed and any other day to which the case may be subsequently adjourned.

(2) Where bail is not taken the Magistrate may commit the accused to prison by his warrant, or verbally to the custody of the officer who apprehended him or of any other officer.

(3) The Magistrate may release the accused without bail during the trial.

#### **69 Appearance by letter**

An accused to whom notice has been given or upon whom a summons has been served to appear before Court in respect of an offence against any regulations made under the Road Traffic Act or an offence under any other enactment punishable by a fine only may, by letter containing

such notice or summons and sent to the Court by registered post, plead guilty to the charge and submit to the order of the Court.

[Amended 29/92]

**69A Where accused does not appear**

(1) Where on the day and place appointed in the summons the accused when called does not appear personally or has not pleaded guilty by letter as provided for in section 69, and it is proved to the satisfaction of the Magistrate that the summons was duly served on him personally, the Magistrate may proceed to hear and determine the charge in the absence of the accused, if the offence charged is one punishable by a fine only.

(2) The Magistrate may, whatever the offence charged, if the accused has not appeared personally or has not pleaded guilty by letter, issue a warrant for his arrest, and adjourn the hearing until he is apprehended.

**69B Sentence on timely guilty plea**

The District Court or the Intermediate Court may mitigate the sentence on an accused party who appears before it and makes, in the opinion of the Court, a timely plea of guilty to the offence with which he stands charged.

[Added 4/99]

**70 Complainant not appearing**

Where on the day and place appointed the accused appears or is brought before the Magistrate, then if the complainant or informant having had notice of the day appointed does not appear, by himself, his barrister or attorney, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing to some other day on such terms as he thinks fit.

**71 Adjournment**

(1) Where the trial of the case cannot be concluded in one day, the Court may adjourn the case to the next day or a subsequent day.

(2) Where the accused is in custody the Magistrate may remand him or take bail as provided in section 68.

[Amended 4/99]

**72 The hearing**

(1) Where the accused is present at the hearing, the substance of the information shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted.

(2) Where the accused admits the truth of the information and shows no sufficient cause why he should not be convicted, then the Magistrate shall convict him, and after hearing such evidence as may be necessary to show the facts and circumstances of the case, shall pass such sentence as the nature of the offence may require.

(3) Where the accused does not admit the truth of the information, the Magistrate shall proceed to hear such witnesses as the prosecutor may examine, and such other evidence as he may adduce in support of his information and also to hear such witnesses as the accused may examine, and such other evidence as he may adduce in his defence and also, if the Magistrate considers such a course conducive to the ends of justice, to hear such witnesses as the prosecutor may examine in reply if the accused has examined any witness or given any evidence other than as to his general character.

(4) After hearing what each party has to say and the evidence adduced the Magistrate shall consider the whole matter and either dismiss the information, or convict the accused and pass such sentence (stating the law on which it is grounded) as the nature of the offence and the law may require.

(5) Where, under the law applicable to the offence, the Magistrate inflicts both fine and imprisonment, the fine shall not exceed 100,000 rupees and the imprisonment shall not exceed 5 years.

[Amended 36/08]

[R 2/83; Amended 5/99]

### **73 No objection allowed to information**

(1) No objection shall be allowed to the information, for any alleged defect in its substance or form, or for any variance which, in the opinion of the Magistrate, is not material to the merits of the case between such information and the evidence adduced in support of the charge.

(2) Where any such variance or defect appears to the Magistrate to be such that the party charged has been deceived or misled, the Magistrate may amend such information and adjourn the hearing of the case to some future day on such terms as he thinks fit.

### **74 Minutes and evidence to be recorded**

(1) Minutes of proceedings of a case and the evidence on both sides may be recorded by tape or other technological means available in the Court.

(2) Where facilities specified in subsection (1) are not available in a Court, the Magistrate shall take down in writing the minutes of proceedings and the evidence on both sides.

[Amended 4/99]

### **75 Costs**

(1) Subject to subsection (2), the District Court or the Intermediate Court may make such order as it thinks fit and reasonable regarding the costs –

(a) to be paid by a party convicted of an offence;

(b) by the prosecution, upon the dismissal of an information where the Court is satisfied that on the facts of the case no prosecution should have been brought against the party charged.

(2) (a) No order as to costs shall be made, except in such special circumstances as the Magistrate thinks fit, where the Magistrate orders a convicted party to pay any sum as a fine, penalty, forfeiture or compensation which does not exceed 3 rupees.

(b) The amount of the costs which an accused person under the age of 17 is ordered to be paid shall not exceed the amount of any fine imposed upon him.

(c) The amount of the costs which any party is ordered to pay shall not exceed 500 rupees in any case tried by the Intermediate Court and 200 rupees in any case tried by a District Court.

(3) The Magistrate shall specify in the conviction or in the order of dismissal, as the case may be, the amount of any costs that he orders to be paid under subsection (1).

(4) The Judges of the Supreme Court may make rules to amend the figures specified in subsection (2)(c).

[Amended 50/85; 4/99]

### **75A –**

### **76 Dismissal of charge**

Where the charge is dismissed the Magistrate shall, if so required, give to the party charged a certificate in Form I of the Second Schedule which on production shall without further proof be a bar to any subsequent prosecution for the same matter against the same party.

### **77 Conviction**

(1) In the case of a conviction a memorandum of it and of the adjudication shall be made in the minutes of the proceedings and if necessary the Magistrate shall afterwards draw up a

formal conviction under his hand and the seal of the Court, which conviction, shall be in Form H of the Second Schedule.

(2) The Magistrate shall deliver to the party convicted, on his application, a copy of such conviction in every case where such party has given security to prosecute an appeal, or where it is shown to the satisfaction of the Magistrate that such conviction is necessary for the defence of such party against any other prosecution already commenced against him for the same offence.

(3) The conviction may be signed and authenticated by any Magistrate for the time being replacing the convicting Magistrate.

#### **77A Conviction for other cases of similar nature**

(1) Subject to subsection (2), where any party is convicted of an offence before the District Court or the Intermediate Court, he may request the Court before which he is convicted to convict and sentence him in respect of any other offence of a similar nature which may be pending against him before that Court or any other Court and which is triable by that Court.

(2) Notwithstanding –

(a) section 114 of the Courts Act; and

(b) section 72 of this Act,

a District Court may, in respect of any party convicted under subsection (1), impose upon that party an aggregate period of imprisonment not exceeding 8 years.

[Added 4/99]

#### **78 Judgment of District Court final**

Subject to this Act, any judgment of a Magistrate under this Act shall be final and conclusive and no such judgment shall be stayed, and execution shall proceed immediately.

#### **79 Where penalty is imprisonment**

Where the penalty awarded against a person convicted is imprisonment with or without hard labour or penal servitude, the Magistrate may issue a warrant of commitment directing the officer to whom it is addressed to take such person and convey him to the prison therein named, and directing the keeper of such prison to receive such person and to imprison him, with or without hard labour, or to put him to penal servitude, as the case may be, for such time as has been awarded and mentioned in the warrant.

#### **80 Imprisonment in lieu of fine**

(1) Where the penalty awarded by a Magistrate against a person convicted is imprisonment or penal servitude as well as a fine, the sentence shall be executed in the following order –

(a) the imprisonment or penal servitude;

(b) the imprisonment in default of payment of the fine.

(2) The warrant of commitment in such case shall be in Form M of the Second Schedule.

#### **81 Imprisonment in lieu of costs**

The imprisonment in default of payment of costs under any sentence shall be reckoned from the expiry of the imprisonment or penal servitude, or of the imprisonment in default of the payment of the fine, as the case may be.

#### **82 Different sentences against same person**

(1) Where a person is sentenced on the same day to imprisonment in one case, and to a fine in another case, the Magistrate may order that the imprisonment in respect of the nonpayment of the fine and costs under the one sentence shall begin after the expiration of the imprisonment (including imprisonment in default of payment of costs) awarded under the other sentence.

(2) Where a person prosecuted under several informations is sentenced to pay 2 or more fines on the same day by a Magistrate, or where 2 or more sentences for fines against one

person come to be executed on the same day, imprisonment in default of payment of such fines shall run concurrently, unless otherwise ordered by the convicting Magistrate.

**83 Sentence on person already convicted**

(1) Where a Magistrate, on conviction of a party charged, awards against him a sentence of imprisonment or of penal servitude, and such person has been previously sentenced to undergo imprisonment or penal servitude for another offence, the Magistrate may order that the term of imprisonment or of penal servitude for the subsequent offence shall commence at the expiration of the imprisonment or penal servitude (including imprisonment in default of payment of fine and costs) to which such person has been previously adjudged.

(2) All warrants of commitment for imprisonment in lieu of fine and costs shall, unless the Magistrate otherwise orders, only take effect from the expiration of the sentence of imprisonment or penal servitude or imprisonment in default of payment of fines or costs which the convicted persons may be then undergoing.

**84** –

**85 Exemption from payment of fees**

A Magistrate may, on the ground of poverty or for other reasonable cause, exempt any person from the payment in whole or in part of any fee payable in any criminal proceedings entered before him.

**86 Execution against prosecutor**

(1) Where costs have been awarded against a prosecutor, a warrant of seizure may be issued on the application of the party to whom such costs have been awarded.

(2) The warrant shall be directed to one of the ushers of the Court and shall order him to seize and sell the movable and immovable property of the party against whom such warrant is issued.

**87 Where several persons jointly convicted**

Where several persons are prosecuted under one complaint, and are convicted, each person shall be individually responsible for the fine imposed upon him and for such part of the costs as may be apportioned to him by the Magistrate.

**88 Imprisonment in lieu of execution**

(1) (a) Fines imposed on and costs decreed against persons convicted shall forthwith be paid into the hands of the cashier or other person appointed to receive such payments.

(b) Where the fines and costs under paragraph (a) are not paid, the Magistrate shall, except in the cases mentioned in subsections (2) and (3) and in section 89(2), issue a warrant for the imprisonment of the person convicted, in respect of the non-payment of such fines and costs for the periods specified in the Third Schedule.

(2) Where the Magistrate has reason to believe that the person convicted has the means of paying the fine and costs, he shall issue a warrant of seizure against the movables of such person, even if the aggregate amount of such fine and costs exceeds 2,000 rupees.

(3) (a) Where the person convicted satisfies the Magistrate that he is able and willing to pay the fine and costs, the Magistrate may grant him time not exceeding 8 days for payment, and may, before granting such time, require such person to furnish security for such payment, or the surrender of himself within such time.

(b) The amount of such security shall, in no case, be less than the aggregate amount of the fine and costs which the person convicted has been condemned to pay, together with the probable costs of execution in case the security bond is forfeited under subsection (4)(b).

(4) (a) Where the return to the distress warrant issued under subsection (2) is one of *nulla bona*, or if at the expiry of the time mentioned in subsection (3), the fine and costs have not been paid, and the person convicted does not surrender himself, the Magistrate shall issue his warrant for the arrest of the person convicted.

(b) On the apprehension of such person and his production before him, the Magistrate shall commit such person to prison in respect of the non-payment of such fine and costs, for the periods specified in the Third Schedule, and, if the party convicted has furnished security under subsection (3), the Magistrate shall further declare the sums mentioned in the security bond to be forfeited, and shall order their recovery, even if the amount exceeds 2,000 rupees, by the seizure and sale of the goods of such sureties, or otherwise according to law.

(5) Where the party convicted, or his surety or sureties, pay part of the amount of fine and costs, execution under subsections (2) and (4) shall issue for the difference only.

(6) The wearing apparel and bedding of a person and his family, to the value of 50 rupees, and the tools and implements of his trade, shall not be liable to seizure under this section.

(7) Where there is an insufficient distress under subsection (2), the Magistrate shall issue a warrant for the imprisonment of the person convicted, in respect of the fine and costs remaining unpaid, for the period specified in the Third Schedule.

### **89 Sale of property seized in execution**

(1) All movables seized under this Act shall be sold as movables taken in execution in a civil case, and the proceeds, if any, shall, after deduction of the expenses of seizure and sale, be applied to the payment or reduction of the fine and costs, and the imprisonment shall thereupon be reduced in conformity with the scale given in the Third Schedule.

(2) In the case of insufficient distress under section 88, the Magistrate may issue a writ of execution against any immovable property belonging to the person convicted, or to such person's surety or sureties (even if the amount of the fine and costs exceeds 2,000 rupees) in whatever district the immovable property may be situate, and thereupon execution shall proceed in the manner provided by section 25 of the District and Intermediate Courts (Civil Jurisdiction) Act, and the proceeds of the sale shall be applied in the manner provided by subsection (1).

(3) Sums recovered by way of seizure, or paid by or on behalf of the person convicted, shall be applied in the first instance to the payment of the costs.

### **90 Payment of fines by instalments**

Nothing in this Act shall in any way modify the powers given to the Magistrate by the Criminal Procedure Act directing fines and other pecuniary penalties and costs to be paid by instalments.

**91** –

### **92 Right of appeal**

Where any person is charged with an offence before a Magistrate or before the Intermediate Court, an appeal shall lie to the Supreme Court against any final decision of the Court –

- (a) by the person charged, against his conviction or sentence, where he is sentenced to undergo penal servitude or imprisonment with or without payment of a fine, or to pay a fine of 500 rupees or more;
- (b) by the Director of Public Prosecutions or, in the case of a private prosecution, by the prosecutor, against any dismissal of a charge or, in the case of a conviction, against the imposition of any sentence.

[Amended 29/90; 5/99]

### **93 Time for appealing**

(1) Any person wishing to appeal under section 92 shall lodge a written notice of appeal with the clerk of the Court within 21 days of the adjudication.

(2) The grounds of appeal shall be stated in the notice.

(3) Within 15 days from the day of lodging the appeal with the clerk, the appellant shall prosecute his appeal before the Supreme Court and serve notice of appeal on the respondent and any other party to the appeal.

[Amended 40/85; 29/90; 29/92]

#### **94 Execution of judgments pending appeal**

(1) (a) Subject to paragraph (b) and to subsection (3), execution of the judgment shall be stayed where the party appealing enters into a recognisance with one or more sureties to the satisfaction of a Magistrate in such sum as he may determine; conditioned to –

- (i) prosecute the appeal before the Supreme Court within 15 days;
- (ii) serve notice of appeal on the respondent and any other party to the appeal;
- (iii) pay any costs which may be ordered to be paid by the Supreme Court; and
- (iv) in the case of a recognisance entered into by a convicted person, comply with the decision of the Supreme Court, or of the Magistrate as the case may be, to pay any fine or surrender to prison.

(b) Where the party appealing is the Director of Public Prosecutions, execution shall be stayed without the need for any recognisance.

(2) The Magistrate may add any other conditions to the recognisance to prevent the appellant from leaving Mauritius.

(3) Where any person who has been convicted and sentenced to a term of imprisonment or penal servitude, gives notice of appeal against his conviction or sentence, the Court before which he has been convicted may order that he shall, pending the determination of his appeal, be remanded in custody.

(4) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated as a prisoner awaiting trial.

(5) The Supreme Court may, if it thinks fit, on the application of an appellant, admit him to bail pending the determination of his appeal.

[Amended 29/90; 29/92]

#### **95 Execution may issue where no appeal**

Where an appellant has not lodged his appeal before the Supreme Court within the time fixed under section 93(1), the Magistrate of the court in which the appellant has been convicted may, upon a certificate of the Registrar that no appeal has been lodged within the time mentioned, issue execution and proceed to estreat and recover the recognisance.

#### **96 Powers of Supreme Court on appeal**

(1) On hearing an appeal, no new evidence shall be admitted, and the information, depositions and other evidence and conviction before the Intermediate or District Court shall be revised by the Supreme Court.

(2) Subject to subsections (3), (4) and (5) the Supreme Court may affirm or reverse, amend or alter the conviction, order or sentence, and may, if the order made or sentence passed is one which the trial Court had no power to make or pass, as the case may be, amend the judgment by substituting for the order or sentence such order or sentence as the Court had power to make or pass, as the case may be.

(3) Where any appeal has been lodged under section 92 and the Magistrate who has the custody of the record certifies in writing to the Supreme Court that the record, relating to the appeal, has disappeared and cannot be reconstituted, the Supreme Court may order a new trial.

(4) Where, on an appeal under section 92, the Supreme Court is of opinion that a magistrate or the Intermediate Court has –

- (a) made an erroneous exercise of the powers conferred by section 127, 128 or 129;  
or
- (b) in the case of a person charged on alternative counts of simple or aggravated larceny and reception or possession of stolen property, erroneously dismissed

one of the charges and convicted on the other, the Court may reverse or alter the conviction, or dismissal as the case may be, and substitute therefor the appropriate determination.

(5) Where, on an appeal under section 92, the Supreme Court is of opinion that a serious irregularity has occurred, it may declare the trial to be a nullity and order a fresh hearing.

[Amended 29/90; 15/94]

#### **97 What objection not allowed**

(1) No objection to a conviction shall be allowed or taken on the ground that there was some defect either in substance or in form in the information, warrant or summons, or on the ground that there was some variance between the information, warrant or summons and the evidence unless the objection was taken before the Magistrate or Intermediate Court.

(2) No conviction shall be quashed on the ground of any defect in substance or in form in the information, warrant or summons, or for any variance unless the Magistrate or Intermediate Court has refused to amend the information and to adjourn the hearing, and unless the Court is satisfied that the appellant has thereby been misled or deceived and prejudiced in his defence.

#### **98 Omission or mistake in conviction**

Where an objection is made on account of an omission or mistake in the drawing up of the conviction or judgment and it is shown to the satisfaction of the Supreme Court that sufficient grounds were in proof before the Magistrate or Intermediate Court to have authorised the drawing up free from that omission or mistake, the Supreme Court may, if it thinks fit, amend the conviction or judgment and adjudicate on it as if no omission or mistake had existed.

#### **99 Objection of incompetent evidence**

(1) No objection to a conviction shall be allowed or taken on the ground that incompetent or improper evidence has been admitted, unless the admission of such evidence was objected to before the Magistrate or Intermediate Court.

(2) No conviction shall be quashed on the ground that such evidence has been admitted if the Supreme Court is satisfied that there was before such Magistrate or Intermediate Court sufficient evidence to support the conviction exclusively of the evidence objected to.

#### **100 Judgment on appeal**

(1) The Supreme Court may, on quashing a conviction, rule that the information be dismissed and thereupon that ruling shall be a bar to a subsequent prosecution of the appellant for the same offence in the same manner as the dismissal by a Magistrate under section 76.

(2) Where the appeal is dismissed, the Supreme Court may award costs against the appellant.

(3) Where the appeal is dismissed, the judgment of the Magistrate or Intermediate Court shall be carried into execution as provided in this Act, and the costs awarded by the Supreme Court may be recovered in the same manner as costs awarded against a party convicted by the Magistrate.

**101-109** –

### **PART IV – MISCELLANEOUS**

#### **110 Investigation in case of violent death**

(1) Where a Magistrate is informed that a person –

- (a) has committed suicide;
- (b) has been killed by another, or by an animal or by machinery or an accident;
- (c) has died under circumstances raising a reasonable suspicion that some person has committed an offence; or
- (d) has died in prison or while in custody of the Police,

he shall proceed or order an officer to proceed to the examination of the body and an investigation of the matter with the assistance of a medical practitioner.

(2) The Magistrate may, in any such case, exercise all of his powers under section 50.

(3) The Magistrate shall forward to the Director of Public Prosecutions the reports of the officer and medical practitioner, together with his own report and any further information bearing on the case.

#### **111 Inquiry into violent or suspicious death**

(1) In any of the cases specified in section 110, the Director of Public Prosecutions may (whether before or after receiving from the Magistrate the reports referred to) require the Magistrate to hold an inquiry into the cause of the death and circumstances connected with it, and thereupon the Magistrate shall hold such inquiry and shall proceed to take the depositions of those who know the facts and circumstances of the case.

(2) The depositions shall be taken and recorded as depositions are taken at an inquiry under Part II and all witnesses shall be liable to the same penalties for non-attendance when summoned, and for giving false evidence as any witness in such inquiry.

(3) In holding such inquiry the Magistrate may exercise any of the powers referred to in sections 50 and 110.

(4) Such inquiry shall be held in open court.

#### **112 Similar inquiries**

A similar inquiry shall be ordered by the Director of Public Prosecutions where a person has suffered some grievous bodily injury in consequence of a crime or accident or where the death of a person may have been due to unnatural causes.

**113** –

#### **114 Sureties may be examined on oath**

(1) Where a person is offered as surety for the appearance before any Court of a person arrested or charged with, or committed for trial for, an offence, such surety may be examined on oath or may be required to make an affidavit touching his means.

(2) Any person who, on being examined or making affidavit before any clerk or Superintendent or Assistant Superintendent of Police or Magistrate or Judge, knowingly makes any false statement, shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

#### **115 Bail bond may be cancelled**

(1) Where it is shown to the satisfaction of a Magistrate or Judge after bail has been taken for the release of an accused, either pending the inquiry or after his commitment for trial or pending proceedings within the summary jurisdiction that such bail is insufficient or invalid, or that there are reasonable grounds for believing that the accused intends to leave Mauritius, the Magistrate or Judge may forthwith order the accused to furnish further bail or may issue a warrant to arrest him and commit him to prison.

(2) (a) Those who have become bail for any person may discharge themselves by taking and surrendering him before the Court or Magistrate by which or by whom he has been bailed and such person may be thereupon committed to prison.

(b) Such a person may find new sureties.

#### **116 Recognisance on appeal or for certiorari**

In the case of a recognisance required on an appeal or on the issue of a writ of certiorari for the removal of a judgment, conviction or order, or on an application for a case, the Magistrate may, on the production of a certificate signed by the Registrar that the appeal has not been prosecuted as provided in section 93, or that the judgment, conviction or order has been affirmed, issue execution against the principal and sureties for recovery of the amount due without further process and as if a judgment had been obtained on the civil side of the Court against such principal and sureties.

#### **117 Recognisance to appear as a witness**

In the case of a recognisance conditioned for the appearance of any person at any trial to give evidence or produce any documents, the Judge, on a certificate of the Registrar to the effect that such person has made default therein, may order, without any further process, the forfeiture of such recognisance, and issue execution for the recovery of the amount of such recognisance as if a judgment had been obtained against such person on the civil side of the Court.

**118 Director of Public Prosecutions may prosecute**

The Director of Public Prosecutions may prosecute any offender and cause the prosecution to be conducted, under his direction by any officer of his department, or any person deputed by him.

**119 Powers of police and others saved**

Nothing in this Act shall affect the powers of arresting or of prosecuting offenders which are vested in any officer or person under any other enactment.

**120 Change of prosecuting officer**

Where a prosecution has been entered or commenced by one officer, it may be continued by another officer without any change in the record being necessary.

**121 Prosecution by agent of private party**

Any agent, manager or other employee may, without any special power or mandate, prosecute an offence committed to the prejudice of his principal or employer.

**122 Intervention of DPP in private prosecution**

Where a private prosecutor abandons the prosecution or wilfully neglects (in the opinion of the Magistrate) to carry on the prosecution in a proper manner, the Magistrate may stay proceedings and refer the matter to the Director of Public Prosecutions who may direct any officer to continue the prosecution and thereupon such prosecution may be continued by such officer without any change in the record being necessary.

**123 Where costs to be borne by State**

Where a private prosecution results in the conviction of the accused, the Magistrate may certify in writing upon the record that in his opinion the prosecution has been of material benefit to the public, and thereupon the fees of Court already paid by the private prosecutor shall be refunded to him, and such person shall not be liable for the costs of witnesses whom, in the opinion of the Magistrate, it was proper to summon in connection with such case, and such costs, after due taxation, shall be paid by the State.

[Amended 48/91]

**124 District for prosecution**

(1) Where an offence has been committed partly in one district and partly in another, the prosecution may take place in either district.

(2) Where the offence is committed in any harbour or arm of the sea or other water which forms the boundary between or is adjacent to 2 districts, the prosecution may take place in either district.

(3) Where an offence has been committed near the boundary between 2 districts, and it is doubtful in which of the 2 districts the offence was committed, the prosecution may take place in either district.

(4) Where a person is charged with having been an accomplice in the commission of an offence under section 37, 38, 39 or 40 of the Criminal Code the prosecution may take place in the district in which the offence was committed.

(5) This section shall not apply to the Intermediate Court.

**125 Information**

(1) The description in the information of any offence in the words of the enactment creating such offence, with the material circumstances of the offence charged, shall be sufficient.

(2) Any exception, exemption, proviso, or qualification, whether it does or does not accompany the description of the offence in the law creating such offence, may be proved by the defendant but need not be specified in the information or proved by the prosecutor.

#### **126 Witnesses heard on oath**

(1) All witnesses heard before a Magistrate or Intermediate Court in a case within the jurisdiction of such Magistrate or Intermediate Court, or before a Magistrate in any inquiry, shall be heard on oath and may be examined, cross-examined and re-examined in accordance with the law of evidence.

(2) Any person who, when heard as a witness in any such case or inquiry, gives false evidence, shall commit an offence and shall be liable, on conviction, to imprisonment for a term not exceeding 2 years.

#### **127 Attempt to commit an offence**

(1) Where on the trial of a person charged with an offence it appears to the Magistrate that the accused did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, but the Magistrate may find that the defendant is not guilty of the offence charged, but is guilty of an attempt to commit the same, and such person may then be punished in the same manner as if he had been convicted upon an information for attempting to commit the particular offence charged in the said information.

(2) No person so convicted shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

#### **128 Prisoner charged with embezzlement**

(1) (a) Where on the trial of a person charged in a criminal information for embezzlement, it is proved that he took the property in question in any such manner as amounts in law to larceny, he shall not, by reason thereof be acquitted, but the Magistrate may find that such person is not guilty of embezzlement but is guilty of larceny and such person may then be punished in the same manner as if he had been convicted upon an information for such larceny.

(b) Where upon the trial of any person charged in a criminal information for larceny, it is proved that he took the property in question in any such manner as amounts in law to embezzlement, he shall not, by reason thereof be acquitted, but the Magistrate may find that such person is not guilty of larceny, but is guilty of embezzlement, and such person may then be punished in the same manner as if he had been convicted upon an information for such embezzlement.

(c) No person so convicted under paragraphs (a) and (b) shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

(2) Subsection (1) shall apply with necessary modifications to a person charged under section 40 of the Criminal Code with receiving or being found in possession of articles obtained by means of a larceny or embezzlement as they apply to a person charged with larceny or embezzlement.

(3) In this section –

“embezzlement” includes embezzlement committed under any of the circumstances specified in section 333 of the Criminal Code;

“larceny” includes simple larceny and larceny committed under any of the circumstances specified in sections 309(2) and 311 of the Criminal Code.

#### **129 Amending information in forgery cases**

Without prejudice to section 73, where on the trial of a person charged on a criminal information with –

(a) forgery;

(b) making use of a forged writing; or

(c) complicity in forgery or making use of a forged writing,

it is proved that the writing, the subject-matter of the charge is of different nature than that averred in the information, the Court shall amend the information accordingly and proceed as if the information had originally averred that the writing was of such nature as has been proved.

### 130 Forms

The forms in the Second Schedule shall be followed as nearly as possible in all proceedings under this Act.

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## FIRST SCHEDULE

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### SECOND SCHEDULE

#### A

(sections 4, 40, 45 and 67)

Usual form of information

In the district of ... AB of ... in the district of ... makes oath and says  
Sworn by the said AB this ... day of ... in the year ...

Before me

District Magistrate

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#### B

(section 4)

Usual form of warrant to apprehend a party charged

District of

To GH constable, and to all the State's other officers of the peace within Mauritius.

These are in the State's name to command you and every of you upon sight hereof to take and bring before me AB Esquire, Magistrate in and for the said district, on the ... day of ... 20... at 10 am, the body of CD of Grand Bay, joiner (or, if his name is not known, then describe him as minutely as the nature of this case will allow), charged on the oath of XZ, of Mahebourg, in the District of Grand Port, tailor, with having on or about the ... day of ... at ... in the district of ...

Given under my hand at ... in the district of ... day of ... 20...

District Magistrate

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#### C

(sections 4 and 40)

Usual form of summons to a party

In the district of ...

To CD of ... in the district of ... carpenter.

Whereas information upon oath has been this day made before me EF, Esquire, Magistrate in and for the said district, by AB of ... in the district of ... that you CD, on the ... day of this present month of ... at ... in the district of ... did ...

These are, therefore, in the State's name, to require you personally to appear at the hour of ... on the day of ... 20... at my office in the said district of ... , before me, to answer the premises, as the law directs.

Given under my hand at ... in the district of ...

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**D**

Usual form of recognisance to give evidence at Assizes

In the district of ... , AB acknowledges himself to be indebted to the State in the sum of ... rupees; EF of ... in the district of ... painter, acknowledges, etc, etc, ... rupees; upon condition as regards each severally that if ... personally appears at the next session of the Assizes ... or at any subsequent session for which the trial of IK, may be set down, then and there to give evidence on behalf of the State against IK of ... blacksmith, for feloniously taking, stealing and carrying away one pewter pot, and does not depart the Island of Mauritius or the Court without leave, then this recognisance to be void; otherwise to remain in full force.

Taken before me, having been first carefully perused by (or read over to) the said ... before he subscribed the same.

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**E**

Usual form of commitment of witness for detention in default of recognisance (or of sureties) to appear at the trial

In the district of ...

To the keeper of the State's gaol at ... or his deputy.

Receive in your custody the body of JA, of ... tailor, sent to you by me, RB, Esquire, Magistrate in and for the district of ... it appearing to me that LN of ... baker, now stands committed on a certain charge of crime, touching which crime the said JA, is a material witness, as appears by information of the said JA, taken on oath, touching the same, and the said JA, being now required by me ... to enter into a recognisance (or to tend sureties) for his (her) personal appearance at the next Assizes to be held at Port Louis, to give evidence on the trial of the said LN for the said crime, and the said JA having admitted to me that he (she) intended to absent himself (herself) from the said trial, and now refusing to enter into such recognisance (or not finding such sureties), him (her) therefore safely keep in your custody in default of such recognisance (or for want of such sureties) to give evidence as aforesaid in the trial of the said LN and have him (her) in court to give evidence accordingly; and for so doing this shall be your sufficient warrant.

Given under my hand at ... in the district of ... this day of ... 20 ...

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**F**

Usual form of recognisance for the appearance of the party charged to take his trial

In the district of ... AB of ... in the said district, joiner, acknowledges himself to be indebted to the State in the sum of ... rupees; CD of ... in the said district, yeoman, acknowledges, etc, ... rupees; EF of ... in the district of Grand Port, sugar planter, acknowledges, etc, ... rupees; upon condition that if the said AB personally appears on the first day of the next session of the Court of Assizes then and there to answer any such criminal information as may be exhibited against him and does not depart the court without leave, then this recognisance to be void, otherwise to remain in full force.

Signature of party bound.

Taken and acknowledged in the district of ... at ... on the ... day of ... 20... before me LM, Magistrate in and for the district of ...

LM

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**G**

Final commitment of prisoners for trial

In the district of ...

To ... and to the Commissioner of the State's gaol or to his deputy.

Whereas ... in the district of ... is now brought before me, ... Esquire, Magistrate in and for the said district, the said ... being charged on the oath of ...

And whereas from the evidence adduced I am of opinion that such evidence is sufficient to put the said ... on his trial, or (that the evidence raises a strong or probable presumption of his guilt).

And whereas the said offence is not within my jurisdiction, I have committed ... to stand trial before the Supreme Court under section ... of ...

These are therefore in the State's name, to command you, the said ... to convey the said ... to the said Commissioner and you, the said Commissioner, are hereby required to receive the said ... in your said gaol, and him there safely keep until he is delivered from your custody by due course of law; and for so doing this shall be your sufficient warrant.

Given under my hand and seal of the Court of ... this ... day of ... 20...

District Magistrate

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**H**  
(section 77)  
Conviction

To wit:  
20...

Be it remembered that on the ... day of ...

In the district of ... AB is convicted before ... the undersigned Magistrate for the said district because (he the said AB etc., stating the offence, and the time and place when and where committed); and I adjudge the said AB for his said offence to be imprisoned for the space of ... and I also adjudge the said AB to pay the sum of ... for costs, and if the said sum for costs is not paid forthwith (or on or before ... next) then I adjudge the said AB to be imprisoned for the space of ... to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand, and seal, the day and year first abovementioned, at ...

District Magistrate

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**I**  
(section 76)

Certificate of dismissal

I hereby certify that an information preferred by CD against AB, for ... , was this day concluded by me, District Magistrate in and for the district of ... and was by me dismissed (with costs).

Dated this ... day of ... 20...

District Magistrate

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**J**

Commitment where the punishment is by imprisonment

In the district of ...

To police constable ... and to the Commissioner of the State's gaol or to his deputy.

Whereas ... this day the ... of ... 20... before me the District Magistrate in and for the district of ... , AB was duly convicted for having committed ... (state offence) ... and I the said Magistrate thereupon order the said ... for the said offence to be imprisoned for the space of ... and to pay the sum of ... for the costs of the case.

These are therefore in the State's name to command you the said constable to take the said ... and ... safely to convey and deliver to the said Commissioner together with his precept and you the said Commissioner are hereby required to receive the said ... into the said gaol, and there to imprison ... for the space of ... and further to imprison the said ... in respect of the costs for ... days unless such costs shall be sooner paid and for so doing this shall be your sufficient warrant.

Given under my hand and seal at the District Court in the district of ... this ... day of ... 20...

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**K**

District Court – Warrant of commitment in default of payment of fine and costs

In the court of ...

To wit

To the Commissioner of Police, to all police constables and to the keeper of the State's gaol or to his assistant or deputy.

Whereas on the ... day of ... 20... was duly convicted before me, District Magistrate of ... , of having committed an infraction of ... and was condemned by me to pay a fine of ... rupees and ... cents and further to pay the sum of ... rupees and ... cents for costs, or in default thereof to be imprisoned in the State's gaol of ... for the periods following, respectively, unless the said sums be sooner paid namely

In respect of the fine of ... rupees, imprisonment during ... days.

In respect of the costs of ... rupees, imprisonment during ... days.

Whereas the said ... has not paid the aforesaid fine and costs.

These are therefore in the State's name to command you, the said Commissioner of Police, and police constable, to apprehend and convey the said ... to gaol; there to deliver him to the Commissioner of the said gaol, and you, the Commissioner of the said gaol, are hereby required to receive the said ... into the said gaol and him there safely to keep for the aforesaid periods consecutively, unless the said sums be sooner paid or until delivery from your custody by due course of law; and for so doing, this shall be your sufficient warrant.

Given under my hand and the seal of the Court, this ... day of ... 20...

District Magistrate

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**L**

Warrant of arrest

In the District Court of ...

To wit

To ...

And to all other officers and constables of police.

Whereas on the ... day of ... AB, was duly convicted before me, the District Magistrate in and for this district, of having committed an infraction of section ... of ... , and was condemned by me to pay a fine of ... rupees, and further the sum of ... rupees for costs, or in default thereof, to be imprisoned in the State's gaol of ... for the following periods respectively, unless the said sums be sooner paid, namely

In respect of the fine of ... rupees, imprisonment during ... days.

In respect of the costs, of ... rupees, imprisonment during ... days.

And whereas on the ... day of ... 20... , I did grant to the said AB, time of ... days for the payment by him of the said sums, for which payment or the surrender of himself within the said time, the said AB furnished security and was set at liberty.

And whereas the said time has expired and the sums have not been paid by the said AB, nor has the said AB surrendered himself.

These are therefore in the State's name to command you and everyone of you on sight hereof to apprehend the said AB, and to bring him before me for committal to gaol.

Given under my hand and the seal of the Court, this ... day of ... 20...

District Magistrate

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**M**

(section 80)

Commitment where the punishment is imprisonment or penal servitude in the first instance, and also imprisonment in default of payment of fine and costs

In the district of ...

To the Commissioner of Police and to all police constables, and to the Commissioner of the State's gaol, or to his deputy.

Whereas on the ... day of ... 20... , before me, the District Magistrate in and for the district of ... was duly convicted for that he, the said ... did (state offence) ... and I, the said Magistrate thereupon ordered the said ... for the said offence (to be imprisoned with or without hard labour) or (to be kept in penal servitude) for the space of ...

And whereas he, the said ... was further condemned by me, the said Magistrate, for the said offence to pay a fine of ... rupees and ... cents, and further to pay the sum of ... rupees and ... cents for costs, or in default thereof to be further imprisoned in Her Majesty's gaol of ... for the periods following, respectively and consecutively, unless the said sums be sooner paid, namely –

In respect of the fine of rupees ... , imprisonment during ... days;

In respect of the costs of rupees ... , imprisonment during ... days;

And whereas the said ... has not paid the aforesaid fine and costs;

These are therefore in the State's name to command you the said Commissioner of Police and police constables, to apprehend and convey the said ... to gaol; there to deliver him to the Commissioner of the said gaol, and you, the Commissioner of the said gaol, are hereby required to receive the said ... into the said gaol, and there to imprison with or without hard labour or to keep in penal servitude the said ... for the space of ... ; and further at the expiry of such imprisonment or term of penal servitude, to imprison the said ... in respect of the fine for ... days, and then in respect of the costs for ... days, unless the said sums be sooner paid or until delivery from your custody by due course of law.

And for so doing, this shall be your sufficient warrant.

Given under my hand and seal of the Court, this day of ... 20...

Magistrate

[Amended 48/91]

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**THIRD SCHEDULE**  
(sections 8 and 89)

**IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE**

	Amount of fine		Period of imprisonment to be ordered			Days	
	Rs	cs	Rs	cs	Day(s)		
Not exceeding			200.00		1		
exceeding	200.00	but not exceeding	1,000.00	not less than	1	and not more than	5
exceeding	1,000.00	"	5,000.00	"	5	"	25
exceeding	5,000.00	"	10,000.00	"	25	"	100
exceeding	10,000.00	"	20,000.00	"	50	"	250
exceeding	20,000.00	"	40,000.00	"	100	"	500
exceeding	40,000.00	"	60,000.00	"	200	"	750
exceeding	60,000.00	"			300	"	1000

**IMPRISONMENT IN DEFAULT OF PAYMENT OF COSTS**

Amount of costs

Period of

	Rs	cs		Rs	cs	Day(s)	Days
not							
exceeding			200.00			1	
exceeding	200.00		1,000.00		not less	1	and not
		but not			than		more than
exceeding	1,000.00	exceeding			"	5	"

[Amended 5/99]

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