CHAPTER 172
CRIMINAL PROCEDURE CODE

• Act • Subsidiary Legislation •

ACT

Act No. 44 of 1988

Amended by

Act No. 33 of 1989
Act No. 62 of 1992
Act No. 15 of 1993
Act No. 4 of 1994
Act No. 36 of 2004
Act No. 13 of 2007

ARRANGEMENT OF SECTIONS

CHAPTER VI

Incapacity to Plead and Insanity

CHAPTER VII

Procedure in Trials, etc., before a Magistrate's Court

CHAPTER VIII

Procedure for Committal for Trial before the High Court

CHAPTER IX

Committal for Sentence

CHAPTER X

Procedure in Trials before the High Court

CHAPTER XI

Appeals from a Magistrate's Court

CHAPTER XII

Miscellaneous

CHAPTER 172
CRIMINAL PROCEDURE CODE

An Act to make provision for the procedure to be followed in criminal cases, and for purposes connected therewith.

[Act No. 44 of 1988 amended by Act No. 33 of 1989, Act No. 62 of 1992, Act No. 15 of 1993, Act No. 4 of 1994, Act No. 36 of 2004, Act No. 13 of 2007.]

[Date of commencement: 30*th October*, 1989.]

[SRO 34 of 1989.]

CHAPTER I

Preliminary

1. Short title

This Act may be cited as the Criminal Procedure Code.

2. Interpretation

In this Code, unless the context otherwise requires—

"committed for trial" means committed for trial before the High Court;

"complaint" means an allegation that an offence has been committed;

"counsel" means any legal practitioner instructed and entitled to represent any party in proceedings before a court;

"court" means the High Court or a magistrate's court, as the context may require;

"indictable offence" means—

(*a*) any offence punishable with death, or for which the punishment is fixed by law;

(*b*) any offence punishable with imprisonment for two years or more; and

(*c*) any offence which under any written law is stated to be triable on indictment,

and an offence may be an indictable offence notwithstanding that under this Code it may also be triable summarily;

"judge" means any judge assigned to Saint Vincent and the Grenadines under section 16 of the Court Order;

"judicial officer" includes a judge, the Registrar, a magistrate and a justice of the peace;

"legal practitioner" means any person authorised to practise as such before the High Court under the provisions of any law for the time being in force;

"magistrate's court" means a court exercising jurisdiction under the Magistrate's Act;

[Chapter 30.]

"oath" includes affirmation and **"swear"** and its grammatical variations includes **"affirm"** and its grammatical variations;

"preliminary inquiry" means an inquiry into a criminal charge conducted by a magistrate's court under the provisions of this Code with a view to the committal of an accused person for trial before the High Court;

"private prosecution" means a prosecution instituted by any person other than—

(*a*) a person appearing on behalf of the Crown, of the Commissioner of Police or of any department of Government; or

(*b*) a public officer acting in his official capacity or any person appearing on his behalf;

"public officer" means any person holding any office in the public service of the Government whether temporarily or permanently and whether paid or unpaid.

3. Inquiry into and trial of offences

(1) Subject to the express provisions of any other law, all offences shall be inquired into, tried and otherwise dealt with according to the provisions of this Code.

(2) Notwithstanding anything contained in this Code, the High Court and a magistrate's court may, subject to the provisions of any law in force in Saint Vincent and the Grenadines, in exercising criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable, or for which no procedure is so prescribed, exercise such jurisdiction according to the procedure and practice observed by and before the Crown Court or, as the case may be, a magistrate's court in England.

CHAPTER II

Powers of Courts, etc.

4. Courts to be open

(1) Subject to the provisions of subsection (2), the place in which any court sits for the purpose of inquiring into or trying any offence shall be an open court to which the public generally may have access, so far as the same can conveniently contain them.

(2) Without prejudice to the provisions of any law relating to juvenile courts, a judge or magistrate, as the case may be, at any stage of the trial of, or inquiry into, any particular case may, in his absolute discretion exercised either on his own motion or on application by any party to the trial or inquiry, order that the public generally or any particular person or persons shall not have access to or remain in the room or building used by the court.

(3) There shall be no appeal from any order made by a judge or magistrate pursuant to subsection (2).

5. Authority of courts and general validity of judicial process

(1) Every court has authority to cause to be brought before it any person who is within Saint Vincent and the Grenadines, or on a Saint Vincent and the Grenadines vessel or aircraft and who is charged with an offence—

(*a*) committed within Saint Vincent and the Grenadines; or

(*b*) which according to law may be inquired into or tried as if it had been committed within Saint Vincent and the Grenadines,

and to deal with the person according to the law and subject to the jurisdiction of the court concerned.

(2) Subsection (1) is without prejudice to any law relating to extradition.

(3) Any summons, warrant of arrest, search warrant or other judicial process issued in due form under the provisions of any law by any court or judicial officer shall be of full force and effect in all parts of Saint Vincent and the Grenadines without any requirement for further authentication, backing or endorsing by any person before execution, and shall remain valid notwithstanding that the person issuing the same has died or ceased to hold office.

(4) In addition to the powers conferred upon a judge by this Code or any other law, a judge shall have all the powers conferred by this Code or any other law upon a magistrate to issue any summons, warrant of arrest, search warrant or other judicial process.

(5) It shall not be necessary that the magistrate who acts before or after the hearing of a case should be the magistrate by whom the case was heard or determined.

6. Powers of courts to try offences

(1) Subject to the other provisions of this Code—

(*a*) any offence may be tried by the High Court;

(*b*) any offence in respect of which jurisdiction is conferred upon such court under the provisions of this Code or any other law may be tried by a magistrate's court.

(2) Notwithstanding anything in subsection (1), the High Court shall only have power to try an offence which is triable summarily under section 8(1)(*a*) or (*b*) if such offence is charged together with an offence which is not triable summarily under either of those two paragraphs.

7. Offences under certain laws

(1) Any offence under any law shall, when any court is mentioned in that behalf in such law, be tried by such court.

(2) When no court is mentioned in the manner referred to in subsection (1), such offence shall be tried in accordance with this Code.

8. Jurisdiction of magistrate's court

(1) Without prejudice to the provisions of any other law, a magistrate's court shall have jurisdiction to try—

(*a*) any offence, other than an offence punishable with death, which is not punishable with imprisonment;

(*b*) any offence punishable with imprisonment for not more than one year;

(*c*) any offence which is triable summarily by virtue of the provisions of sections 9 to 15; and

(*d*) any offence which is stated in any law other than this Code to be triable summarily whether or not such offence may also be tried on indictment.

(2) For the purposes of subsection (1)(*d*), it shall be deemed that an offence is stated to be triable summarily where the punishment in the case of a summary trial is prescribed whether or not it is specifically stated that the offence is triable summarily or where it is stated that the offence may be tried by a magistrate.

9. Offences triable summarily or on indictment

(1) Subject to the provisions of section 16, where a person who has attained the age of eighteen is brought before a magistrate's court charged with an indictable offence

specified in the First Schedule, or with an offence which under any other law is triable summarily or on indictment, the provisions of sections 10 to 15 shall apply.

(2) Subject to the provisions of section 16, where a person who has not attained the age of eighteen is brought before a magistrate's court charged with an indictable offence, other than homicide, the provisions of sections 10 to 15 shall apply.

10. Presence of accused

Every thing that the court is required to do under sections 11 to 15 shall be done before any evidence is called and with the accused in court unless he so conducts himself as to render it impracticable for the proceedings to be conducted in his presence or he absents himself voluntarily.

11. Matters to be considered

(1) The court shall consider whether, having regard to the matters mentioned in subsection (3) and any representations made by the prosecutor or the accused, the offence appears to the court to be more suitable for summary trial or for trial on indictment.

(2) Before considering as required by subsection (1), the court shall—

(*a*) cause the charge to be written down, if this has not already been done, and read to the accused; and

(*b*) afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.

(3) The matters to which the court is to have regard under subsection (1) are—

(*a*) the nature of the case;

(*b*) whether the circumstances of the case make the offence one of a serious character;

(*c*) whether the punishment which the court would have power to inflict for it would be adequate; and

(*d*) any other circumstances which appear to the court to make it more suitable for the offence to be tried one way rather than the other.

(4) Notwithstanding anything contained in subsections (1) to (3), if the Director of Public Prosecutions applies in writing for the offence to be tried on indictment, the court shall proceed to inquire into the matter in accordance with the provisions of Chapter VIII.

12. Where court considers summary trial more suitable

(1) If, when the court has considered as required by section 11, it appears to the court that the offence is more suitable for summary trial, the provisions of subsections (2) and (3) shall apply.

(2) The court shall explain to the accused in ordinary language that—

(*a*) it appears to the court to be more suitable for him to be tried summarily for the offence and that he can either consent to be so tried or, if he wishes, be tried on indictment; and

(*b*) that if he is tried summarily and convicted by the court, he may be committed for sentence to the High Court under section 19 if the court, on obtaining information about his character and antecedants, is of the opinion that they are such that greater punishment should be inflicted than the convicting court has power to inflict for the offence.

(3) After explaining to the accused as provided by subsection (2), the court shall ask him whether he consents to be tried summarily or whether he wishes to be tried on indictment and—

(*a*) if he consents to be tried summarily, the court shall proceed to summary trial; and

(*b*) if he does not so consent, the court shall proceed to inquire into the charge in accordance with the provisions of Chapter VIII.

13. Where court considers trial on indictment more suitable

If, when the court has considered as required by section 11, it appears to the court that the offence is more suitable for trial on indictment, the court shall tell the accused that it has so decided and shall proceed to inquire into the charge in accordance with the provisions of Chapter VIII.

14. Procedure when property is below certain value

(1) If the offence is one specified in paragraph 3 of the First Schedule, then the court shall, before proceeding in accordance with the provisions of section 11, consider whether, having regard to any representations made by the prosecutor or the accused, the value involved at the time of the offence, measured in accordance with the provisions of that Schedule, appears to be less than three thousand dollars; if the court so decides, it shall proceed to try the offence summarily and the accused shall have no right to be tried on indictment.

(2) If the court has decided that the value does not exceed three thousand dollars and has commenced to try the matter summarily then, notwithstanding that it subsequently appears that the value exceeds three thousand dollars, the summary trial shall continue.

(3) A summary trial shall not be invalidated by reason of the fact that at any time after the trial has commenced, whether before or afters its conclusion, it appears that the value exceeded three thousand dollars.

(4) When a court has tried a matter summarily by virtue of subsection (1) and has convicted the accused it may commit the accused for sentence in accordance with the provisions of section 19.

[Section 14 amended by Act No. 62 of 1992.]

15. Consent in case of persons under fourteen

(1) When consent is required to be given for summary trial, such consent shall, in the case of a person who has not attained the age of fourteen, be given by the parent or guardian, if present in court, of such person. If no such parent or guardian is present then no consent shall be required.

(2) The court may, in its discretion, adjourn the case so as to give a parent or guardian an opportunity to be present in court.

16. Two or more offences of accused

(1) When a person is charged with more than one offence which could, in accordance with the provisions of this Code, if tried on indictment be tried together, then, if any one or more of those offences is an offence which is not triable summarily, all the offences shall be tried on indictment and the provisions of sections 9 to 14 shall not apply.

(2) When a person is charged with more than one offence which could, in accordance with the provisions of this Code, if tried on indictment be tried together, then, if both or all the offences are triable summarily, whether by virtue of sections 9 to 14 or otherwise,

and the accused in respect of one or more of the offences has the right of election to be tried on indictment and so elects, then all such offences shall be tried on indictment.

(3) Where two or more persons are charged jointly or who could, in accordance with the provisions of this Code, if tried on indictment, be tried together, with an offence or offences in respect of one or more of which the court offers election of summary trial or trial on indictment, such offence or offences shall only be tried summarily if both or all the accused elect for summary trial.

17. Sentences which courts may pass

(1) Subject to the provisions of this section, a court may pass any sentence authorised to be passed by law in respect of any offence for which it is imposed.

(2) Subject to the provisions of subsections (3) to (5), a magistrate's court shall not pass—

(*a*) a sentence of imprisonment for more than seven years;

(*b*) a fine of more than twenty thousand dollars.

[Subsection (2) amended by Act No. 62 of 1992 and by Act No. 36 of 2004.]

(3) Notwithstanding anything in subsection (2), where any law—

(*a*) provides the term of imprisonment which may be imposed for an offence on summary conviction;

(*b*) provides the amount of fine which may be imposed for an offence on summary conviction; or

(*c*) provides both the term of imprisonment and the fine which may be imposed on summary conviction,

then a magistrate's court may impose such fine or such sentence of imprisonment, or both, notwithstanding that such fine or imprisonment exceeds the limits laid down in subsection (2).

(4) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(5) In determining the extent of a court's jurisdiction to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be ordered in default of payment of a fine, costs or compensation.

18. Sentences in cases of conviction of more than one offence at one trial

(1) Subject to subsection (2), when a person is convicted at one trial of two or more offences, the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to impose. Such punishments when consisting of terms of imprisonment shall commence one after the other unless the court directs that the sentences shall run concurrently.

(2) Notwithstanding anything contained in subsection (1), the aggregate imprisonment imposed by a magistrate's court, excluding imprisonment in default of payment of a fine, costs or compensation, at one trial shall not exceed fourteen years nor the aggregate fine of thirty thousand dollars.

[Subsection (2) amended by Act No. 36 of 2004.]

19. Committal for sentence

(1) When a magistrate has convicted a person of an offence triable both summarily and on indictment and is of the opinion that a higher sentence should be passed in respect

of the offence that he has power to pass, he may commit the offender for sentence to the High Court.

(2) On committing a person under subsection (1), the magistrate may either admit the offender to bail or remand him in custody until he appears, or is brought, before the High Court.

(3) When an offender is committed under subsection (1), the High Court may deal with him and make any order it could have made if he had been convicted before that court on indictment.

20. Supervision order

(1) When a court convicts any person of stealing or destroying or damaging any property and the property stolen, destroyed or damaged is any tree, sapling, shrub, underwood, plant, root, fruit, vegetable, cocoa, nutmeg, mace, cotton or any cattle, the court may order such person to be placed under police supervision for a period of one year.

(2) An order under subsection (1) may be additional to any other punishment, and if such order is made in addition to a sentence of imprisonment, the period of supervision shall commence immediately upon the expiry of such sentence.

(3) Every order made under subsection (1) shall require such person—

(*a*) within twenty-four hours of leaving the court or, where he has been sentenced to imprisonment, within the same period after his release from custody, to inform the officer in charge of the police station nearest to his dwelling place of the address and exact location thereof;

(*b*) at least twenty-four hours before any change of residence on his part during the period of such order—

(i) to seek the permission in writing of such officer for such change of residence, and

(ii) to inform the officer of the address and exact location of the dwelling place which is to be his residence after such change has occurred;

(*c*) to be and remain within his stated dwelling place between the hours of 7 p.m. each night and 6 a.m. each morning unless permitted by such officer to be absent therefrom;

(*d*) to obey any instructions given to him by such officer for the purpose of ensuring compliance on the part of such person with the requirements of the order;

(*e*) to receive such visits as may be made from time to time at his dwelling house by any police officer.

21. Failure to comply with section 20

Any person who, without reasonable excuse, fails or neglects to comply with the requirements of any order made under section 20 is guilty of an offence and liable to imprisonment for six months.

CHAPTER III

Arrest, Escape, Retaking, etc.

22. Arrest: how made

(1) In making an arrest, the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or endeavours to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in subsection (2) shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the person to be arrested.

23. Search of place entered by person sought to be arrested

(1) If any person acting under a warrant or order to arrest, or having authority to arrest without warrant, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If entrance to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant or order from a magistrate, and in any case in which a warrant may be issued but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter such place and search therein and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

24. Power to break open doors and windows for liberation

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

25. No unnecessary restraint

A person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

26. Search of arrested person

(1) When a person is arrested—

(*a*) by a police officer under a warrant which does not provide for the taking of bail or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(*b*) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest, or when the arrest is made by a private person, the police office to whom he makes over the person arrested, may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

(2) The provisions of subsection (1) shall be without prejudice to the provisions of this Code or any other law giving a right to search.

27. Power of police officer to detain, search, etc.

Any police officer may stop, search and detain any vessel, vehicle or aircraft in which or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, or any other thing in respect of which an offence is being or has been committed is to be found, and also any person who may reasonably be suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained or in respect of which an offence is being or has been committed.

28. Mode of searching women

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

(2) If a woman is searched by a man or without strict regard to decency, the person authorising the search and the person carrying out the search shall each be guilty of an offence and liable to imprisonment for six months.

29. Power to seize offensive weapons

The officer or other person making any arrest may take from the person arrested any offensive weapon which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required to produce the person arrested.

30. Arrest by police officer without warrant

(1) Any police officer may, without an order from a magistrate and without a warrant, arrest—

(*a*) any person whom he suspects upon reasonable grounds of having committed an indictable offence;

(*b*) any person who commits in his presence any offence punishable by imprisonment;

(*c*) any person who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

(*d*) any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of committing, or having committed, an offence with reference to such thing;

(*e*) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Saint Vincent and the Grenadines which, if committed in Saint Vincent and the Grenadines would have been punishable as an offence, and for which he is under the Fugitive Offenders Act, or any other law relating to extradition and in force in Saint Vincent and the Grenadines, or otherwise liable to be apprehended and detained in Saint Vincent and the Grenadines;

(*f*) any person whom he suspects upon reasonable grounds of having in his possession, without lawful excuse, any implement of housebreaking;

(*g*) any person for whom he reasonably believes a warrant of arrest has been issued by a court of competent jurisdiction in Saint Vincent and the Grenadines.

(2) A police officer knowing of a design to commit any offence may arrest the person so designing if it appears to such officer that the commission of the offence cannot otherwise be prevented.

(3) Nothing in this section shall be held to limit or modify the operation of any other law empowering a police officer to arrest without a warrant.

31. Refusal to give name and residence

(1) When any person who in the presence of a police officer has committed or has been accused of committing a non-indictable offence refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained:

Provided that a police officer shall, unless he is in uniform, produce evidence of his identity before demanding a person's name and residence.

(2) When the true name and residence of such person have been ascertained he shall be released on him executing a bond, with or without sureties, to appear before a magistrate if so required:

Provided that if such person is not resident in Saint Vincent and the Grenadines, the bond shall be secured by a surety or sureties resident in Saint Vincent and the Grenadines.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond or, if so required, fail to furnish sufficient sureties, he shall forthwith be taken before the nearest magistrate having jurisdiction.

32. Arrest by private person

Any private person may arrest any person who in his view commits an indictable offence, or whom he reasonably suspects of having committed an offence punishable with imprisonment for three years or more (provided that such offence has been committed).

33. Arrest by owners of property

Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his employees or persons authorised by him.

34. Disposal of persons arrested by private persons

(1) A private person arresting any other person without a warrant shall, without unnecessary delay, make over such person to a police officer or in the absence of such an officer shall take such arrested person before a magistrate.

(2) If there is reason to believe that the person arrested comes under the provisions of section 30, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-indictable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name and residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 31. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

35. Detention of persons arrested without warrant

(1) When any person has been taken into custody without a warrant for an offence, other than an offence punishable with death, the police officer in charge of the police station or other place for the reception of arrested persons to which such person is brought shall at once inquire into the case, and if, when the inquiry is completed, there is no sufficient evidence to believe that the person has committed any offence he shall be released forthwith.

(2) If upon such inquiry there is reason to believe that the person has committed an offence but the offence does not appear to be of a serious nature such police officer may, and shall if it does not appear practicable to bring such person before a court within twenty-four hours after he was taken into custody, release the person on him executing a bond, with or without sureties, to appear before a magistrate's court at a time and place named in the bond.

(3) If, on a person being taken into custody, it appears to the police officer that the inquiry into the case cannot be completed forthwith, he may release such person on him executing a bond, with or without sureties, to appear at such police station and at such times named in the bond unless he receives prior notice in writing from the officer in charge of that police station that his attendance is not required. Any such bond may be enforced as if it were a bond conditioned for the appearance of such person before a magistrate's court for the place in which such police station named in the bond is situated.

(4) When any person taken into custody is retained in custody, he shall be brought before a magistrate's court at the earliest time practicable, whether or not the police inquiries are complete, and in any event within forty-eight hours.

(5) When any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and the place where he is being held sent to one person reasonably named by him without delay or, when some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary.

36. Offences committed in judicial officer's presence

When any offence is committed in the presence of a judicial officer for which a police officer could arrest without a warrant, the judicial officer may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions of this Code relating to bail, commit the offender to custody.

37. Recapture of person escaping

If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Saint Vincent and the Grenadines.

38. Arrest by judicial officer

A judicial officer may at any time arrest, or direct the arrest in his presence, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

39. Provisions of sections 23 and 24 to apply to arrests under sections 36 and 38

The provisions of sections 23 and 24 shall apply to arrests under sections 36 and 38 although the person making the arrest is not a police officer having authority to arrest.

40. Assistance to judicial officer or police officer

Every person is bound to assist a judicial officer or police officer reasonably demanding his aid—

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

(*b*) in the prevention or suppression of a breach of the peace or in the prevention of any injury attempted to be committed to any public property.

41. Search warrants

(1) When a judicial officer is satisfied by evidence on oath that there is reasonable cause to believe that any property whatsoever with or with respect to which an offence has been committed is in any place, such officer may grant a warrant (hereinafter referred to as a "search warrant") directed to a police officer or other person to enter and search any place in any part of Saint Vincent and the Grenadines, by force if necessary, at any time of day or night. If such property or any part thereof be found, such officer shall seize it and bring it before a magistrate's court to be dealt with according to law.

(2) For the purposes of this section and section 42, **"place"** includes any building, vessel, aircraft, vehicle, box, receptacle or locality whatsoever in any part of Saint Vincent and the Grenadines as may be specified in the warrant.

(3) Every warrant shall be as near as may be in the form set out in the Second Schedule and shall be under the hand of the person issuing the same and, when issued by a court, shall bear the seal of that court. A search warrant may be issued on any day including a Sunday.

(4) A search warrant shall remain in force until it is executed or until it is cancelled by the person or court issuing it.

(5) A search warrant may be directed to one or more persons and may be executed by all or anyone or more of them.

(6) A search warrant directed to a police officer may be executed by any other police officer whose name is endorsed on the warrant by the officer to whom it is directed or endorsed.

(7) The provisions of this section are without prejudice to the power to issue a search warrant conferred by any other law, and the provisions of this section and section 42 shall apply to search warrants issued under any other law as they apply to warrants issued under this section.

42. Execution of search warrants

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

(2) If ingress thereto or egress from such place cannot be obtained or the person in charge thereof cannot be found, the police officer or other person executing the warrant may use such force as may be reasonably necessary to break open any outer or inner door or window of such place in order to enter or leave the same or the better to search therein.

(3) When any person in or about any such place is reasonably suspected of concealing about his person any article for which a search is being made, such person may be searched by a person of the same sex and with a strict regard to decency.

(4) When anything is seized and brought before a court in pursuance of power conferred by a search warrant, it may be retained until the conclusion of the case or investigation in respect of which its seizure was authorised, reasonable care being taken for its preservation.

(5) If any appeal is made in such case or if any person is committed for trial, any court concerned may order any such thing to be retained further for the purpose of such appeal or trial.

(6) If no appeal is made or no person is committed for trial, the court shall direct such thing to be returned to the person from whom it was taken unless the court has power and sees fit, or is required by law, to dispose of it otherwise.

43. Bail in certain cases

(1) When any person, other than a person charged with murder, genocide, high treason, treason or misprision of treason, appears or is brought before a court or is committed for trial by any court, and is prepared at any time or at any stage in the proceedings before such court to give bail, such person may, in the discretion of the court, be admitted to bail with or without sureties.

(2) The amount of bail in any case to which the provisions of subsection (1) apply shall not be excessive and any court may, in its discretion, accept a deposit of cash in lieu of giving security; provided that the amount of bail shall not be deemed to be excessive if it is equal to or less than the maximum fine prescribed for any offence with which the applicant has been charged.

(3) . . . . . .

[Subsection (3) deleted by Act No. 15 of 1993.]

(4) In admitting a person to bail, the court may impose such conditions as it considers appropriate.

(5) Without prejudice to the generality of subsection (4), a person as a condition of being admitted to bail may be required—

(*a*) to deposit his passport or other travel document with the court;

(*b*) to report to a police station at such times as may be stipulated;

(*c*) to confine himself to a specified locality either generally or between such hours of each day or night as may be specified.

(6) When any person is in breach of a condition of his bail, he may be arrested without warrant by a police officer and brought before the court. When a person is brought before a court for breach of a condition of his bail the court may, if it thinks fit, rescind his bail or may impose further conditions.

(7) In any case where a person in custody—

(*a*) is not eligible for bail;

(*b*) has been refused bail, under this section,

such person shall be brought before the Court for the purpose of a preliminary inquiry within nine months of the date when the charge is laid, failing which the person may apply to the High Court for bail and the High Court may in its discretion grant bail on such conditions as it may think fit.

[Subsection (7) inserted by Act No. 15 of 1993.]

44. Discharge from custody when bail is granted

(1) As soon as the recognisance, with or without sureties, has been entered into, a person admitted to bail under the provisions of this Code shall be released and if he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and such officer shall, on receipt of such order, release him.

(2) Nothing in subsection (1) shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognisance was entered into.

45. Power to order further bail

If for any reason insufficient sureties have been taken, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find further sureties and, if he should fail to do so may commit him to prison.

46. Application for discharge by sureties for appearance

(1) All or any of the sureties for the appearance of a person released on bail may at any time apply to the court to discharge the bond, either wholly or so far as it relates to the applicant or applicants.

(2) On such an application being made the court shall issue a warrant of arrest directing that the person so released shall be brought before it.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the court shall direct the bond to be discharged wholly or so far as it relates to the applicant or applicants and may call upon such person to find other sufficient sureties or to deposit such sum of cash as the court may fix, and if he fails to do so may commit him to prison.

47. Death of surety

When a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the person who gave the bond may be required to find a new surety.

48. Person absconding may be arrested

If it is made to appear to any court, by information on oath, that any person bound by recognisance is about to leave Saint Vincent and the Grenadines, the court may issue a warrant for his arrest and may detain his passport or other travel document and commit him to prison until trial, unless the court shall see fit to admit him to bail upon further recognisance.

49. Forfeiture of recognisance

(1) When it is proved to the satisfaction of a court by which a recognisance has been taken, or when the recognisance is for appearance before a court, that such recognisance has been forfeited, the court shall record the grounds of such proof and call upon any person bound by the recognisance to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person, or of his estate if he be dead.

(3) Such warrant may be executed by the attachment and sale of such property wherever found in Saint Vincent and the Grenadines.

(4) If such penalty is not paid and cannot be recovered by attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for six months.

(5) The court may, in its discretion, remit any portion of the penalty and enforce payment in part only.

50. Appeal against forfeiture of recognisance

All orders made under section 49 by a magistrate's court shall be appealable to, and may be revised by, the High Court.

51. High Court may direct levy

The High Court may direct a magistrate's court to levy the amount due on a recognisance to appear and attend at the High Court.

52. Security for keeping the peace or for good behaviour

Whenever a magistrate is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity or injure the informant or his property or any other person or persons or their property, the magistrate may, in a manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace or for being of good behaviour towards the informant of such other person or persons for such period, not exceeding one year, as the magistrate thinks fit to fix.

53. Order to show cause to be made

When a magistrate, acting under section 52, deems it necessary to require any person to show cause under such section, he shall make a provisional order in writing setting forth—

(*a*) the substance of the information received;

(*b*) the amount of the bond to be executed;

(*c*) the term for which it is to be in force; and

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

54. Procedure in respect of person present in court

If such person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

55. Procedure in respect of person not present in court

If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer, in whose custody he is, to bring him before the court:

Provided that whenever it appears to such magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the magistrate may at any time issue a warrant for his arrest.

56. Copy of order to accompany summons or warrant

Every summons or warrant issued under section 55 shall be accompanied by a copy of the order made under section 53, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

57. Inquiry as to truth of information

(1) When an order under section 53 has been read or explained under section 54 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 55, the

magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before the court.

(3) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

58. Order to give security

(1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour towards the informant or any other person or persons, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(*a*) no person shall be ordered to give security of a nature different from, or of an amount larger than or for a period longer than, that specified in the order made under section 53;

(*b*) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(*c*) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) Any person ordered by a magistrate to give security under this section may appeal to the Court of Appeal, and the provisions of Chapter XI (relating to appeals) shall apply to every such appeal.

59. Discharge of person informed against

If on an inquiry under section 57 it is not proved that it is necessary for keeping the peace or maintaining good behaviour towards the informant or any other person or persons as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

60. Commencement of period for which security is required

(1) If any person in respect of whom an order requiring security is made under section 53 or 58 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

61. Contents of bond

The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour towards the informant or such other person in respect of whom the order is made, as the case may be.

62. Power to reject sureties

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

63. Procedure on failure of person to give security

(1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he may be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security; or he may be fined a daily sum not exceeding one hundred dollars for each day after the date on which such period commences, until such period expires or until within such period he gives such security.

(2) The period, if any, for which any person is imprisoned for failure to give security, shall not exceed six months.

(3) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to a magistrate and shall await the orders of such magistrate.

64. Power to release persons imprisoned for failure to give security

Whenever a magistrate is of the opinion that any person imprisoned for failing to give security may be released without hazard to the community or to the informant or to such other person or persons as the case may be, such magistrate may order such person to be discharged.

65. Application by surety for discharge

(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any bond executed under any of the preceding sections.

(2) On such application being made, the magistrate shall issue his summons or warrant as he thinks fit, requiring the person for whom such surety is bound, to appear or to be brought before him.

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 61, 62, 63 and 64, be deemed to be an order made under section 58.

CHAPTER V

General Provisions Relating to Criminal Proceedings

66. Authority of Director of Public Prosecutions in respect of conduct of prosecutions

(1) The Director of Public Prosecutions, any legal practitioner instructed for the purpose by him, and any Crown Counsel, may appear to prosecute on behalf of the Crown, the Commissioner of Police or any other public officer, public authority or department of Government in any criminal proceedings before any court.

(2) Subject to such directions as may be given by the Director of Public Prosecutions from time to time, any police officer may conduct criminal proceedings in a magistrate's court on behalf of the Crown or the Commissioner of Police, and any such police officer may appear and conduct the prosecution notwithstanding that he is not the officer who made the complaint or charge in respect of which such proceedings arose.

(3) The Director of Public Prosecutions may by writing, authorise any public officer to conduct prosecutions in a magistrate's court in respect of particular matters or categories of offences in relation to the activities or functions of a particular department of the Government.

(4) This section is without prejudice to the provisions of any other written law giving power to a public officer to conduct proceedings in a magistrate's court.

67. Power of Director of Public Prosecutions to enter *nolle prosequi*

(1) In any proceedings against any person, and at any stage thereof before verdict or judgement, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings, whether undertaken by himself or by any other person or authority, shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognisance shall be discharged; but such discharge of an accused shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when such *nolle prosequi* is entered, the Registrar or the clerk of such court, as the case may be, shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the officer in charge of the prison in which such accused may be detained and also, if the accused person has been committed for trial, to the magistrate's court by which he was so committed and the clerk thereof shall forthwith cause a similar notice in writing to be given to any person bound over to prosecute or give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

(3) Any person bound over to prosecute or give evidence and his sureties, if any, shall, upon the entering of a *nolle prosequi*, be released from his recognisances.

(4) Any *nolle prosequi* or authority purporting to be signed by the Director of Public Prosecutions, shall be admitted and deemed to be *prima facie* valid for the purpose for which it was issued without proof of the signature.

68. Withdrawal from prosecution

In a trial before any court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, and any other complainant may with the consent of the court, at any time before judgement is pronounced, withdraw from the prosecution of any person; and upon such withdrawal—

(*a*) if it is made before the accused is called upon to make his defence, he shall be discharged but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(*b*) if it is made after the accused is called upon to make his defence, he shall be acquitted.

69. Conduct of private prosecution

Any person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by him in that behalf.

70. Complaint and charge

(1) Criminal proceedings may be instituted by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

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

(3) A complaint may be made orally or in writing, but if made orally shall be reduced to writing by the magistrate, and in either case shall be signed by the complainant and the magistrate:

Provided that where proceedings are instituted by a police officer or other public officer, acting in the course of his duty as such, a formal charge, drawn up in conformity with the requirements of this Code, and duly signed by such officer, may be presented to the magistrate and shall for the purposes of this Code be deemed to be a complaint and shall be signed by the magistrate.

(4) A magistrate, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under subsection (3), draw up, or cause to be drawn up, and shall sign, a formal charge containing a statement of the offence with which the accused is charged.

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

(6) Every complaint shall be for one matter only but the complainant may lay one or more complaints against the same person at the same time and the court hearing any one of such complaints may deal with one or more of the complaints together or separately as the interests of justice appear to require.

(7) Notwithstanding anything in subsection (6), no complaints shall be heard together if they could not be charged together in an indictment in accordance with the provisions of section 165.

71. Issue of summons or warrant

(1) Upon receiving a complaint and the charge having been duly signed in accordance with the provisions of section 70, a magistrate may in his discretion issue either a summons or a warrant of arrest to compel the attendance of the accused before a magistrate's court:

Provided that a warrant of arrest shall not be issued in the first instance unless the complaint has been supported by oath, either of the complainant or of a witness.

(2) A magistrate shall not refuse to issue a summons under the provisions of this section unless he shall be of the opinion that the application for a summons is frivolous or vexatious or an abuse of the process of the court and if he refuses to issue a summons the person applying for the same may require the magistrate to give him a written certificate of refusal and may apply to the High Court for an order directing such magistrate to issue the summons sought or such other summons as the High Court may direct.

(3) Every summons issued by a judicial officer under this Code shall be in writing, in duplicate and signed by such judicial officer.

(4) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire into or deal with the complaint or charge. It shall state the offence for which the person against whom it is issued is charged.

72. Form, validity and execution of warrant of arrest

(1) Every warrant of arrest may be issued at any time on any day and shall be under the hand and seal of the judicial officer by whom it is issued and directed to the police officer in charge of the place in which the act complained of has been committed or in

which the person to be apprehended is believed to be, and to all other police officers of Saint Vincent and the Grenadines.

(2) Every warrant of arrest shall state shortly the offence with which the person against whom it is issued is charged, or other reason for the arrest, and shall name or otherwise describe such person and shall order the police officers to whom it is directed to bring such person before a magistrate's court to answer to the charge therein mentioned or to be further or otherwise dealt with according to law. Any such warrant may be executed by any one or more police officers, and shall not be returnable to any particular time but shall remain in force until executed or cancelled by the judicial officer issuing the same or by order of a court having jurisdiction in the matter.

(3) The judicial officer issuing such a warrant may at the same time or any subsequent time issue one or more duplicate warrants, and the Commissioner of Police may also certify and issue copies of any warrant received by him. Any duplicate warrant or certified copy as aforesaid shall be deemed to be of the same force and effect as the original.

(4) In the exercise of the powers conferred by a warrant of arrest, a police officer may enter (if need be, by force) and search any place where that person is or where the police officer with reasonable cause believes him to be.

73. Security may be taken

(1) When a warrant is issued for the arrest of any person for any offence other than murder, genocide, high treason, treason or misprision of treason, it may, in the descretion of the officer issuing the warrant, be directed, by the endorsement on the warrant, that if such person executes a bond, with or without sureties if such officer thinks appropriate, for his attendance before the court at a specified time and date and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

(2) The endorsement shall state—

(*a*) the number of sureties, if any;

(*b*) the amount in which the person for whose arrest the warrant is issued and his sureties, if any, are to be bound; and

(*c*) the time, date and place at which he is to attend before the court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bonds to the court.

74. Service of summons

(1) Subject to the provisions of sections 75 and 76, every summons shall be served upon the person to whom it is directed by a police officer by delivering to him personally.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the duplicate.

75. Service when person summoned cannot be found

(1) Where a person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving the summons for him with some adult member of his family or with his employer, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the duplicate.

(2) If any person with whom a summons is left pursuant to this section fails or refuses to take all reasonable steps to cause the same to be served, he is guilty of contempt of court.

76. Procedure when service cannot be effected as hereinbefore provided

If service in the manner provided by sections 74 and 75 cannot by the exercise of due diligence be effected, the serving officer shall affix the summons to some conspicuous part of the building, vessel or other place in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

77. Service on a company

Service of a summons on a body corporate may be effected by serving it on the secretary, manager or other principal officer of the corporation or by registered letter addressed to the body corporate at its registered address in Saint Vincent and the Grenadines. In the latter case service shall be deemed to have been effected when the letter would have arrived in the ordinary course of post.

78. Proof of service of summons

(1) If the person who serves a summons does not attend at the time and place mentioned in the summons, to depose if necessary to the service thereof, the court may accept, as *prima facie* evidence of service, the summons endorsed with the date of service and signed by the person serving the same.

(2) In the case of service by registered post, the production of the certificate of registration shall be accepted by the court as *prima facie* evidence of service.

79. Personal attendance of accused may be dispensed with

(1) The personal attendance of an accused before a magistrate's court to answer a summons alleging an offence may be dispensed with in the circumstances set out in this section, in the case of an offence prescribed as being an offence to which the provisions of this section apply.

(2) An accused who desires to plead guilty and be convicted of any such offence in his absence may, within seven days of the service of the summons upon him, sign the same in the appropriate place in acknowledgement of his guilt and return such summons by hand or by registered post to the clerk of the court together with the full amount in cash specified therein by way of penalty.

(3) A summons issued in respect of any such offence shall contain a notification to the accused of his rights under subsection (2) and shall specify the amount fixed by the magistrate issuing the same as the penalty for that offence by that accused person.

(4) Upon receiving from an accused the amount of the penalty and the summons duly signed and returned in accordance with the provisions of this section, the clerk of the magistrate's court shall issue his official receipt for the amount of such penalty and shall place the summons before the magistrate who shall thereupon formally convict the accused of the offence and enter such conviction and the amount of the penalty in the records of the court.

(5) In any case in which an accused does not desire to plead guilty to an offence under the provisions of this section, his personal attendance shall be required in answer to the summons and the ordinary provisions of this Code in respect of a summons shall apply.

(6) The Attorney-General, after consultation with the Chief Justice, may, by order, prescribe offences to which the provisions of this section shall apply.

80. If summons disobeyed, warrant may be issued

If a person served with a summons does not appear at the time and place mentioned in the summons and it is proved to the satisfaction of the court in accordance with the provisions of section 78, that the summons was duly served a reasonable time before the

date appointed for the appearance of the person before the court, the court, after taking such evidence on oath to substantiate the matter of the complaint as it may in any particular case consider necessary, may issue a warrant to arrest the person so summoned and to bring him before the court to be dealt with according to law:

Provided that no warrant of arrest shall be issued in a case in which the summons is one to which the provisions of section 79 apply and in which a written plea of guilty has been entered and the penalty paid in accordance with the provisions of that section.

81. Power to take bond for appearance

(1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, for his appearance in such court on such date and at such time as may be appointed.

(2) When any person who is bound by any bond taken under the provisions of this section, or under any other provisions of the Code, to appear before a court, does not so appear, the court may issue a warrant directing that such person be arrested and brought before the court.

82. Court may order prisoner to be brought before it

(1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in prison, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.

(2) The officer to whom an order issued under the provisions of subsection (1) is irected, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid and shall thereafter return him to the prison unless otherwise ordered by a court of competent jurisdiction, and such prisoner shall for all purposes be deemed to be in lawful custody during such absence.

83. Provisions of Chapter V generally applicable to summonses and warrants

The provisions contained in this Chapter relating to summons and warrants and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

84. Person convicted or acquitted not to be tried again for same offence

A person who has been once tried by a court of competent jurisdiction for an offence and acquitted or convicted of such offence, while such acquittal or conviction has not been reversed or set aside, shall not be liable to be tried again on the same facts for the same offence.

85. Consequences supervening or not known at time of former trial

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

86. Where original court was not competent to try subsequent charge

Subject to the provisions of any other law, a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

87. Where plea of guilty to another offence is accepted

Where a person charged pleads not guilty to an offence charged but guilty to some other offence of which he might be found guilty on that charge and he is convicted on that plea of guilty, without trial, for the offence of which he has pleaded not guilty then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

88. Special pleas allowed to be pleaded

(1) In every court the following special pleas, and no others, may be pleaded, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict*, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of *autrefois acquit*, *autrefois convict*, and pardon may be pleaded together, and shall, if pleaded be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of *autrefois acquit*, or *autrefois convict*, it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea is pleaded.

(5) Every special plea shall be in writing or, if pleaded orally, shall be reduced to writing, and shall be filed with the Registrar or clerk of the court as the case may be.

89. General effect of pleas *autrefois acquit* or *autrefois convict*

(1) On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, if it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him, and that he might on the former trial have been convicted of any of the offences of which he may be convicted on the count to which the special plea is pleaded, then, subject to subsection (2), the court shall give judgement that he is discharged from those counts which relate to such offences of which he might, on the former trial, have been convicted.

(2) If it appears that the accused might, on the former trial, have been convicted of any offence of which he may be convicted on the count to which the special plea is pleaded, but that he may be convicted also on that count of some offence of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over to the other offence charged.

(3) Upon the trial of an issue to which this section refers, the judge or magistrate, as the case may, shall determine whether in law the accused was convicted or liable to be convicted of any offence of which he stands charged or may be convicted of any offence of which he has pleaded *autrefois acquit* or *autrefois convict*. In the High Court any issue of fact arising in relation thereto shall be for determination by the jury, and the judge may, if he shall think fit, require the jury to return a special verdict in relation thereto.

90. Effect where previous offence charged was without aggravation

(1) Subject to the provisions of section 85, where an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in the

charge on a former trial, but adds a statement of intention or circumstances of aggravation tending, if proved, to increase the punishment, the previous acquittal or conviction shall be a bar to the subsequent indictment.

(2) A previous acquittal or conviction on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder.

91. Use of deposition, etc., and former trial, on trial of special plea

On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the depositions, if any, transmitted to the court on the former trial, together with the judge's notes, if available, and the depositions transmitted to the court on the subsequent charge or the copy of the record of the magistrate's court, as the case may be, shall be admissible in evidence to prove or disprove the identity of the charges.

92. Proof of previous conviction

(1) In any inquiry or other proceeding under this Code, in which it becomes necessary to prove the previous conviction of any accused, a copy of the record of the conviction for the offence on summary trial, or a certificate containing the substance and the effect only (omitting the formal part) of the indictment and conviction upon trial upon indictment, purporting to be signed by the officer having custody of the records of the court where the offender was convicted shall, upon proof of the identity of the person, be sufficient *prima facie* evidence of the said conviction without proof of the signature or official character of the person appearing to have signed such copy or certificate.

(2) Without prejudice to the provisions of subsection (1), *prima facie* proof may be given of a previous conviction in any place within or without Saint Vincent and the Grenadines by the production of a certificate purporting to be issued under the hand of a police officer in the place where the conviction was had, containing a copy of the sentence or order and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused.

93. Summons for witness

(1) If it is made to appear on the statement of the complainant or of the defendant or otherwise, that material evidence can be given by or is in the possession of any person, a court having cognisance of any criminal cause or matter concerned may issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents, writings and things in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Rules made under section 17 of the Court Order may prescribe the fees and expenses payable to witnesses summoned to give evidence in criminal cases in a magistrate's court as well as in the High Court.

94. Warrant for witness who disobeys summons

If, without sufficient excuse, a witness does not appear in obedience to a summons issued under the provisions of section 93 the court, on proof of the proper service of the summons a reasonable time beforehand, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

95. Warrant for witness in first instance

If the court is satisfied by evidence on oath that a person summoned as a witness will not attend unless compelled to do so, such court may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

96. Mode of dealing with witness arrested under warrant

When any witness is arrested under a warrant the court may, on his furnishing security by recognisance to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained in custody for production at such hearing.

97. Power of court to order prisoner to be brought up for examination

In any case in which a court requires to examine as a witness in any proceedings before such court a person confined in any prison, the procedure provided by section 82 shall be followed.

98. Penalty for non-attendance of witness

(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend shall be liable by order of the court to a fine of one hundred dollars.

(2) Such fine if not previously paid may be levied by attachment and sale of any moveable property belonging to such witness within the limits of the jurisdiction of such court.

(3) In default of recovery of any such unpaid fine by attachment and sale, the witness may, by order of the court, be imprisoned as a civil prisoner for any term for which he could have been imprisoned for non-payment of a fine under section 29 of the Criminal Code.

(4) For good cause shown, the High Court may remit or reduce any fine imposed under this section by a magistrate's court.

99. Power to summon material witness or examine person present

Any court may, either of its own motion or on application (oral or otherwise) of any party to the proceeding, at any stage of any inquiry, trial or other proceeding, summon or call any person as a witness, or recall and re-examine any person already examined, and the court shall summon and examine, or recall and re-examine, any such person if his evidence appears to be essential to the just decision of the case:

Provided that the prosecutor or the counsel for the prosecution and the defendant or his counsel shall have the right to cross-examine any such person, and the court may adjourn the case for such time (if any) as it thinks necessary to enable such cross-examination to be adequately prepared, if, in its opinion, either party may be placed at a serious disadvantage by the calling of any such person as a witness.

100. Evidence to be given on oath

(1) Every witness in any criminal cause or matter shall be examined upon oath and the court before which any witness shall appear shall have full power and authority to administer the appropriate oath.

(2) Notwithstanding anything in subsection (1), the court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is, according to his religious belief, unlawful, or who by reason of tender years or want of religious belief

ought not, in the opinion of the court, to be admitted to give evidence on oath; the fact of the evidence having been so taken shall be recorded in the proceedings.

(3) Notwithstanding anything contained in subsection (2), the court shall not receive the evidence of a child of tender years unless the court is satisfied that the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(4) An accused shall not be liable to be convicted on the evidence of an unsworn child unless that evidence is corroborated by some other material evidence implicating the accused.

101. Refractory witness

(1) When any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being orally required by the court to give evidence—

(*a*) refuses to be sworn;

(*b*) having been sworn refuses to answer any question put to him;

(*c*) refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or

(*d*) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding ten days, and may in the meantime commit such person to prison unless he sooner consents to do what is required of him.

(2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and so on again from time to time until such person consents to do what is required of him.

(3) Nothing in subsection (1) or (2) shall affect the liability of any such person to any other punishment or proceeding for neglecting to do what is required of him nor shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

(4) This section applies to a person who is neither sworn nor affirmed for the reasons specified in section 100(2) but whose evidence is received by the court as if such person had been sworn.

102. Proof by formal admission

(1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or accused, and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

(*a*) may be made before or at the proceedings;

(*b*) if made otherwise than in court, shall be in writing;

(*c*) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director, or manager, or the secretary or some other similar officer of the body corporate;

(*d*) if made on behalf of an accused who is an individual, shall be made by his counsel.

(3) An admission under this section for the purpose relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may, with the leave of the court, be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

103. Taking of evidence

(1) Except when the accused has by his conduct rendered it impracticable, or he is deemed to have consented to the conduct of his trial in his absence as provided in section 114(2), all evidence in any inquiry or trial shall be taken in the presence of the accused.

(2) All evidence shall be recorded in English, and if evidence is given in any other language it shall be interpreted. In the case of any documents tendered in evidence which are written in a foreign language, a translation shall be provided. Any interpretation or translation shall be made by a person appointed or approved for that purpose by the court.

(3) If the accused does not understand English, any evidence shall be interpreted to him in a language which he understands.

104. Recording of evidence

(1) The Chief Justice may give directions as to the manner in which evidence, or the substance of evidence, shall be taken down in any proceedings before any criminal court.

(2) Subject to the provisions of section 138 and to any directions given under subsection (1), in inquiries and trials before a magistrate's court the evidence of the witness shall be recorded in the following manner—

(*a*) the evidence of each witness, or so much thereof as the magistrate deems material, shall be taken down by the magistrate or in his presence and under his superintendence, and shall be signed by the magistrate and shall form part of the record;

(*b*) such evidence shall not ordinarily be taken down in the form of question and answer but in the form of narrative:

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer, or the evidence or any part thereof in any particular case in the form of question and answer.

(3) At the request of a witness his evidence shall be read over to him.

(4) Without prejudice to the provisions of subsection (1), shorthand notes or a tape recording may be taken of the proceedings at the trial of any person before the High Court, and a transcript of such notes or recording shall be made if the court so directs and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial.

105. Procedure where person charged is the only witness called

(1) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(2) Where any witness other than the person charged is called on behalf of the defence, the person charged shall not be allowed to give evidence after such witness without the permission of the court.

106. Procedure where there are two or more accused

(1) Where two or more accused are tried jointly, the one first charged shall make his election first and after he has given his evidence (if he so elects) the others shall do so successively in the order in which they were charged.

(2) Where two or more accused are tried jointly, the witnesses called on behalf of the accused first charged shall, so far as is practicable, be examined first and witnesses called on behalf of the other accused shall be examined successively in the order in which the accused were charged.

(3) A witness called on behalf of an accused may be cross-examined on behalf of any other accused and may then be cross-examined by the prosecution.

107. Addressing the court

(1) The prosecutor may address the court at the commencement of the prosecution case.

(2) The accused or his counsel may address the court at the commencement of the defence's case, if, and only if, witnesses to the facts other than the accused himself are to be called for the defence.

(3) After the close of the evidence, if any, for the defence and in rebuttal, if any, the addresses to the court shall be in the following order—

(*a*) the prosecutor may address the court except in a case where the accused is not represented by counsel and has not called witnesses to the facts other than himself;

(*b*) the accused or his counsel may address the court whether or not the prosecutor has addressed the court.

(4) Where there are more than one accused, the order of addresses to the court by or on behalf of the accused shall be in the order in which they were charged.

108. Mode of delivering judgement

(1) Except where the presence of the accused has been dispensed with by leave of the court, or where he has by his conduct rendered it impracticable or where he is deemed to have consented to the conduct of the trial in his absence in accordance with the provisions of section 114, the judgement or verdict of the court in the exercise of its original jurisdiction in any criminal trial shall be pronounced or delivered, or the substance of the judgement explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice has been given to the parties and their counsel (if any):

Provided that the whole of the judgement shall be read out if it is requested by the prosecution or the defence.

(2) No judgement delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his counsel on the day or from the place notified for the delivery thereof, or for any omission to serve or defect in serving, on the parties or their counsel or any of them, the notice of such day or place.

109. Contents of judgement

(1) In the case of a conviction, the judgement shall specify the offence of which, and the section of the law under which the accused person is convicted and the punishment to which he is sentenced or other lawful order of the court upon such conviction.

(2) In the case of an acquittal, the judgement shall state the offence of which the accused is acquitted, and the section of the law under which the charge was preferred, and shall direct that he be set at liberty in respect of that offence.

(3) Every judgement in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the magistrate and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by such magistrate in open court at the time of pronouncing it:

Provided that in a case in which the accused has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with the provisions of this subsection if the judgement contains only the finding and sentence or other final order and is signed and dated by the magistrate at the time of pronouncing it.

110. Accused entitled to copy of judgement on application

On the application of the accused person, a copy of the judgement in any criminal trial, and if practicable and he so desires a translation in his own language if that language is not English, shall be given to him without delay and free of any charge.

111. Property found on accused

Without prejudice to the provisions of the Criminal Code relating to forfeiture, where upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

(*a*) that the property or any part thereof be restored to the person who appears to the court to be entitled thereto, and if he be the person charged that it be restored either to him or to such other person as he may direct; or

(*b*) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

112. Alternative convictions

(1) Where on a person's trial for any offence, the court finds him not guilty of the offence specifically charged but the allegations in the charge amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court, the court may find him guilty of that other offence or of an offence of which he could be found guilty, on the facts found to be proved, on a charge specifically preferring that other offence.

(2) For the purposes of subsection (1), any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence, then he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

113. Committal to prison

Where the court convicts a person and orders him to be imprisoned without the option of a fine, the court shall, by warrant, commit him to prison, there to be imprisoned for the period mentioned in the warrant.

114. Accused entitled to be present at trial and may be represented by counsel

(1) Every person accused of any criminal offence shall be entitled to be present in court during the whole of his trial (including any preliminary inquiry) unless he so conducts himself in court so as to render the continuance of proceedings in his presence impracticable or where he is deemed to have consented to the conduct of the trial in his absence. A court may, in its discretion, allow the whole or any part of a trial to take place in the absence of the accused with his consent.

(2) For the purpose of this Code, the consent of an accused to the conduct of his trial or any part thereof in his absence shall be deemed to have been given—

(*a*) where he enters a written plea of guilty under the provisions of this Code;

(*b*) where the court is satisfied that, having been duly summoned to appear before the court a reasonable time before the date appointed, he wilfully fails to appear; or

(*c*) where during the course of his trial he wilfully absents himself either by not appearing after any adjournment at a time of which notice has been given or otherwise.

(3) Every person accused of any criminal offence, whether present in court or absent, may be represented by counsel.

CHAPTER VI

Incapacity to Plead and Insanity

115. Court to inquire into suspected incapacity of accused

(1) Where, in the course of a trial or preliminary inquiry, the court has reason to believe that the accused may be of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness and may, for that purpose, order him to be detained in such place as the court may direct or in such other place as may be provided by any law, for medical observation and report for any period not exceeding one month.

(2) If the court finds that the accused is of unsound mind and incapable of making his defence it shall postpone further proceedings in the case.

(3) Where the trial is before the High Court, a jury shall be empanelled and the question whether the accused is of unsound mind and incapable of making his defence shall be for the jury.

(4) Where it is found that the accused is incapable of making his defence—

(*a*) if the case is one in which bail may be taken, the court may release the accused on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person and for his appearance, if required before the court or such officer as the court may appoint in that behalf;

(*b*) if the case is one in which bail may not be taken, or if sufficient security be not given, the court shall order the accused to be detained in a mental hospital and shall report the case for the order of the Governor-General.

(5) Where an accused has been released under subsection (4)(*a*), nothing in this section shall prevent the accused from being admitted to a mental hospital under the provisions of any law relating to the detention of person suffering from mental disorder.

(6) In this Chapter, **"mental hospital"** means any place, by whatever name called, appointed under the provisions of any law for the reception, treatment and care of persons suffering from mental disorder.

116. Trial, etc., may be resumed

When any trial or preliminary inquiry is postponed, the court may at any time resume the trial or preliminary inquiry and require the accused to be brought before it when, if the court finds that the accused is capable of making his defence, the trial or preliminary inquiry shall proceed. If however, the court finds that the accused is still incapable of making his defence, it shall act as if the accused had been brought before it for the first time.

117. Certificate of medical practitioner

When an accused is detained in a mental hospital and a medical practitioner employed in such hospital certifies that the accused is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law and the certificate of such medical practitioner shall be receivable as *prima facie* evidence of the capacity of the accused.

118. Defence of insanity at preliminary inquiry

When the accused appears to be of sound mind at the time of the preliminary inquiry, notwithstanding that it is alleged that at the time when the act was committed or the omission made in respect of which the accused is charged he was insane so as not to be responsible according to law, the court shall proceed with the inquiry and, if the accused ought in the opinion of the court to be committed for trial, the court shall so commit him.

119. Inability to understand proceedings

If the accused, though not of unsound mind, cannot be made to understand the proceedings, the court may proceed with the trial or inquiry. In the case of a magistrate's court, if the trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances and the High Court shall pass thereon such order as it thinks fit.

120. Defence of insanity at trial

(1) When any act or omission is charged against any person as an offence and it is given in evidence at the trial of such person for that offence that he was insane so as not to be responsible according to law for his act or omission at the time when such act was committed or such omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane at the time, the court shall make a special finding that the accused committed the act or made the omission but was not guilty by reason of insanity.

(2) When the trial is before the High Court, the question of whether the accused did the act or made the omission but was insane at the time shall be one for the jury.

(3) When a special finding is made under this section, the court shall order the accused to be detained in a mental hospital as a criminal person of unsound mind until the Governor-General's pleasure be known.

CHAPTER VII

Procedure in Trials, etc., before a Magistrate's Court

121. Non-appearance of complainant at trial

If, in any case which a magistrate's court has jurisdiction to hear and determine, the accused appears at the time and place appointed in the summons for the hearing of the

case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear either in person or by counsel or other person authorised to represent him, the court shall dismiss the charge, unless for some reason the court shall think proper to adjourn the hearing of the case to some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him in custody.

122. Non-appearance of defendant at trial

If at the time and place of hearing appointed in a summons the defendant does not appear, and it be proved that the summons was duly served within a reasonable time before the time appointed for his appearance, and if the court is satisfied on any sufficient evidence that the accused has wilfully refused to attend or otherwise may be deemed to have consented to the trial taking place in his absence, the court may either proceed to adjudicate on the case as if the defendant had appeared or, if the court is not satisfied that the defendant has so consented or considers that it is inexpedient for any other reason that the trial should proceed in the absence of the accused, the court may issue a warrant for the arrest of the defendant or may issue a new summons.

123. When neither party appears

If at the time and place appointed neither party appears, the court may dismiss or adjourn the case as shall seem fit.

124. Appearance of both parties

(1) Subject to the provisions of sections 9 to 15, if both parties appear, the court shall proceed to hear the case and the substance of the charge shall be read to the accused by the court and he shall be asked whether he admits or denies it.

(2) In a case in which the defendant is a corporation, it shall be sufficient if the corporation appears by a representative appointed in writing purporting to be signed by a person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation.

(3) At the time and place appointed under this section or section 121, 122 or 123 for any adjourned hearing, the court shall have the same powers to proceed with, dismiss or adjourn the case as if the complaint was before the court for the first time.

125. Where cause of complaint has arisen out of jurisdiction of the court*

(1) If, on the hearing of any charge but before commencing to take evidence it appears that the case of complaint arose wholly out of the limits of the jurisdiction of the court before which such complaint has been made, the court may on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose. On so doing the court shall forward to the magistrate of such court the complaint, recognisances, if any, which shall thereupon be treated to all intents and purposes as if they had been taken by such magistrate and the court may if it thinks expedient, remand the defendant in custody to be taken before such magistrate.

(2) Notwithstanding anything contained in subsection (1) or in the Magistrate's Act, where after a court has commenced to hear the evidence in any case it appears that the offence was committed wholly outside its jurisdiction, it shall continue to hear the case and shall be deemed for all purposes to have jurisdiction so to do.

---

* *Note*.—Section 125 would now appear to be superfluous in view of the provisions of section 2 of the Magistrate's (Jurisdiction) Act, 1989, now section 6 of the Magistrate's Act.

126. Accused pleading guilty

If the accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him unless, after hearing anything which may be said by or on behalf of the accused, whether in mitigation or otherwise, there shall appear to the court to be sufficient cause to the contrary.

127. Pleas in other cases

If the accused pleads not guilty, the court shall proceed to try the case as hereinafter provided. If the accused refuses to plead the court shall direct that a plea of not guilty be entered for him, or in any appropriate case may act in accordance with the provisions of sections 115 and 116.

128. Procedure after plea of not guilty

(1) If the accused does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution. The accused or his counsel may cross-examine each witness called by the prosecution and if the accused is not represented by counsel the court shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any question to that witness and shall record his answer. If the accused desires to question a witness, the court shall record the questions put by the accused and the answers given by the witness.

(2) A witness who has been cross-examined may be re-examined by the prosecutor.

129. Acquittal of accused if no case to answer

At the close of the evidence in support of the charge, the court shall consider whether or not a sufficient case is made out against the accused to require him to make a defence, and if the court considers that such a case is not made out, the charge shall be dismissed and the accused forthwith acquitted and discharged.

130. The defence

(1) At the close of the evidence in support of the charge, if it appears to the court that a case has been made out against the accused sufficiently to require him to make a defence, the court shall again explain to the accused the substance of the charge and shall inform him that he need not say anything but that he has the right to give evidence on oath from the witness box and that if he does so he will be liable to cross-examination. The court shall ask him whether he has any witnesses to call and examine or has any other evidence to adduce in his defence. The court shall hear the accused and his witnesses, if any, and shall permit the accused to examine any witnesses whom he calls.

(2) If the accused states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused and that there is likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the trial and issue process or take other steps as necessary, to compel the attendance of such witnesses.

131. Evidence in rebuttal

If the accused adduces evidence in his defence introducing new matter which the prosecutor could not reasonably have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the said new matter. A witness called in rebuttal may be a previous witness recalled or a new witness.

132. Amendment, etc., of charge and variance between charge and evidence

(1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective either in substance or in form, the court may make such order for the alteration, substitution or addition of a charge, as the court thinks necessary to meet the circumstances of the case.

(2) Where a charge is altered, added or substituted, the court shall thereupon call upon the accused to plead to the altered or new charge.

(3) In such case as is mentioned in subsection (2), the accused shall be entitled, if he so wishes, to have the witnesses (or any of them) recalled to give evidence afresh or to be further cross-examined by the defence and, in such last mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

(4) Variance between a charge and the evidence adduced in support of it with respect to the day upon which the alleged offence was committed is not ordinarily material, and the charge need not be amended for such variance if it is proved that the proceedings were instituted within the time (if any) limited by law for the institution thereof and the actual date is not material on any other grounds.

(5) When an alteration, addition or substitution is made under subsection (1), or there is a variance between the evidence and the charge as described in subsection (4), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary in the interest of justice.

133. Decision of the court

The court having heard both the prosecutor and the accused and their witnesses shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, or may without proceeding to conviction deal with the accused under the provisions of the Probation of Offenders Act.

134. Drawing up conviction

If the court convicts the accused, a minute or memorandum thereof shall then be made. If the accused then gives notice of appeal, or if the magistrate is then informed by the Registrar that an appeal has been lodged, the magistrate shall draw up a conviction in proper form under his hand and shall transmit it to the Registrar within fourteen days.

135. Certificate of acquittal

If the court acquits the accused, the magistrate shall, if requested so to do, make an order for the dismissal of the charge and give the accused a certificate thereof.

136. Costs to defendant in private prosecutions

(1) In any private prosecution where the magistrate dismisses the charge, he may, in his discretion, order that the prosecutor shall pay to the defendant such costs as he may deem reasonable. Any such costs may be recovered in the same way as a fine may be recovered.

(2) Nothing in subsection (1) shall affect the power of a court to award the payment of costs on conviction under section 27 of the Criminal Code.

137. Limitation of time for proceedings for summary offence

Except where a longer time is specifically allowed by law, no offence which is punishable only by a fine or by imprisonment for six months or less shall be triable by a magistrate's court unless the charge relating to it is laid within twelve months from the time

when the matter of such charge arose or the date upon which evidence sufficient to justify proceedings first came to the actual or constructive knowledge of a competent complainant.

138. Special procedure in minor cases where the charge is admitted

(1) Notwithstanding anything contained in this Code, but subject to the provisions of any directions given by the Chief Justice under the provisions of section 104, a magistrate may in any case in which the accused person admits the offence, record the proceedings in accordance with the provisions of subsection (2).

(2) In a case to which this section applies, it shall be sufficient compliance with the requirement of this Code relating to the manner of recording of evidence if the magistrate, when the accused makes a statement admitting the truth of the charge, instead of recording the accused's statement in full, enters in the record a plea of guilty, and it shall be sufficient compliance with the provisions of section 104, relating to the contents of the judgement, if the judgement of the court consists only of the finding, the specific offence to which it relates and the sentence or other order:

Provided that a magistrate may be required by the Court of Appeal to state in writing the reasons for his decisions in any particular case.

CHAPTER VIII

Procedure for Committal for Trial before the High Court

139. Power to commit for trial

Subject to the provisions of this Code, a magistrate's court may commit any person for trial before the High Court.

140. Court to hold preliminary inquiry

When any charge has been brought against any person in respect of an offence not triable summarily, or which may be triable summarily or on indictment and as to which—

(*a*) the Director of Public Prosecutions has requested that it be tried on indictment; or

(*b*) the court is of the opinion that it ought to be tried on indictment; or

(*c*) the accused, having a right to elect, has elected to be tried on indictment,

a preliminary inquiry shall be held in accordance with the provisions hereinafter contained.

141. Magistrate to read charge to accused and explain purpose of the proceedings

A magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused the charge in respect of which the inquiry is being held and shall explain to him that he will have an opportunity later on in the inquiry, if he so desires, of making a statement, of giving evidence and of calling witnesses. The magistrate shall further explain to the accused the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on trial before the High Court.

142. Taking of depositions

(1) Subject to the provisions of section 143, when an accused is brought before a magistrate's court charged with an offence in respect of which a preliminary inquiry is to be held the magistrate shall, in the presence of the accused, take down in writing or cause to be taken down in writing, the statements of witnesses called in support of the charge by

the prosecution. Such statements shall be deemed to be and are hereafter in this Code referred to as, depositions, and shall ordinarily be taken down in narrative form, unless the magistrate deems it expedient in any particular case to record the evidence or any part of the evidence in the form of question and answer.

(2) The accused, or any counsel appearing on his behalf, shall be entitled to cross-examine any such witness and the answers of a witness thereto shall form part of the deposition of such witness.

(3) If the accused is not represented by counsel, the magistrate shall, at the close of the examination of each witness for the prosecution, ask the accused whether he wishes to put any questions to that witness.

(4) If a witness has been cross-examined, he may be re-examined by the prosecutor and his answers in re-examination shall also form part of his deposition.

(5) As soon as the deposition of a witness taken down under this section is completed, it shall be read over to him in the presence of the accused and, subject to the provisions of subsection (6) shall, if necessary, be corrected.

(6) If any witness denies the correctness of any part of the deposition when the same is read over to him, the magistrate may, instead of altering the deposition as written down, make a memorandum thereon of the objection made to it by the witness and shall add any remarks about the matter as he thinks necessary.

(7) If a statement is made by a witness in a language other than that in which it is taken down and the witness does not understand the language in which it is taken down, it shall be interpreted to him in a language which he understands and the identity of the interpreter shall be recorded thereon by the magistrate.

(8) The deposition of each witness shall, upon completion, be signed by the witness, or attested by his mark, and by the magistrate before whom it was taken.

143. Written statements in lieu of depositions

(1) Notwithstanding anything contained in section 142, in committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (2) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions referred to in subsection (1) are—

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

(*b*) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(*c*) before the statement is tendered in evidence a copy of the statement is given by the party proposing to tender it, to each of the other parties to the proceedings; and

(*d*) none of the parties before the statement is tendered in evidence at the committal proceedings, objects to the statement being so tendered under this section.

(3) The following provisions also have effect in relation to any written statement tendered in evidence under this section—

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

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

(*c*) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(*c*) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.

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

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

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

(7) A statement admitted under the provisions of this section shall be a deposition for the purposes of this Code:

Provided that a person whose statement has been read shall not be required to be bound over to give evidence in the High Court.

144. Variance between evidence and charge

No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence for the prosecution, shall be allowed at a preliminary inquiry; but if any variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, on the application of the accused, adjourn the inquiry or may allow any witness to be recalled, and such questions to be put to him as by reason of such variance seem reasonable.

145. Remand

(1) If, from the absence of witnesses or any other sufficient cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time, by warrant, remand the accused for a reasonable time, not exceeding eight clear days at any one time, to some prison or other place of security. If the remand is not for more than three days, the court may by word of mouth order the officer or person in whose custody the accused is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.

(2) During a remand, the court may at any time order the accused to be brought efore it and, subject to the provisions of section 43, may on remand at any time admit the accused to bail.

146. Statement of accused

(1) If, after the examination of the witnesses called for the prosecution, the court considers that, on the evidence as it stands, there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused and explain the nature thereof to him in simple language and address him in the following words or words to the like effect—

"You will have an opportunity to give evidence on oath before me and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so. Anything you do say will be taken down and may be given in evidence at your trial".

(2) Before the accused makes any statement in answer to the charge, the magistrate shall state to him and give him understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to make any admission or confession of his guilt, but that whatever he says then may be given in evidence at his trial notwithstanding any such promise or threat.

(3) Everything which the accused says shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(4) When the whole statement is made conformable to what the accused declares is the truth, the record thereof shall be attested by the magistrate who shall certify that the statement was taken in his presence and contains accurately the whole statement made by the accused. The accused may sign such record, but if he refuses to do so the court shall add a note of his refusal and the record may be used as if he signed it.

(5) Nothing in this section shall prevent the prosecution from giving in evidence any admission or confession made at any other time by the accused which would be admissible in evidence at his trial.

147. Procedure if offence is admitted by accused

If, in any statement made to the court under the provisions of section 146, the accused admits that he is guilty of the offence charged, then, if the offence is not one of high treason, treason, murder or genocide, the court shall proceed in accordance with the provisions of Chapter IX.

148. Evidence and address in defence

(1) Subject to the provisions of section 147, immediately after complying with the requirement of section 146 and whether or not the accused has made a statement, the magistrate shall ask him whether he wishes to give evidence on oath and whether he wishes to call witnesses on his own behalf.

(2) The magistrate shall take the evidence of the accused and of any witnesses in the like manner as in the case of witnesses for the prosecution. Every such witness, not merely being a witness as to the character of the accused, shall be bound by recognisance to appear and give evidence at the trial of the accused.

(3) If the accused states that he has witnesses to call but that they are not present in court, and the magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused and that there is a likelihood that they could give material evidence on behalf of the accused, the magistrate may adjourn the inquiry and issue process or take other steps to compel the attendance of such witnesses and, on their attendance, shall take their depositions and bind them by recognisance in the same manner as witnesses under subsection (2).

(4) The accused or his counsel shall be heard either before or after the evidence for the defence is taken at his discretion, and may, if the accused gives evidence himself and calls witnesses, be heard, with the leave of the court, both before and after the evidence is taken:

Provided that where the court gives leave to the accused or his counsel to be heard before as well as after the evidence is taken, the prosecutor shall be entitled to be heard immediately before the accused or his counsel is heard for the second time.

(5) When the accused reserves his defence, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the magistrate shall ask the accused whether he intends to call witnesses at the trial other than those whose evidence has been taken under this section and, if so, whether he desires to give their names and addresses so that they may be summoned. The magistrate shall record the names and addresses of any such witnesses so given.

149. Discharge of accused

(1) If, at the close of the case for the prosecution or after hearing any evidence in defence, the magistrate considers that the evidence against the accused is not sufficient to put him on his trial, the court shall order him to be discharged forthwith as to the particular charge under inquiry. Such discharge shall not be a bar to any subsequent charge in respect of the same facts.

(2) Nothing in subsection (1) shall prevent the court from proceeding, either forthwith or after such adjournment of the inquiry as seems expedient in the interests of justice, to investigate any other charge upon which the accused may have been summoned or otherwise brought before it, or which from the evidence given in the course of the hearing before it of the charge so dismissed it may appear that the accused has committed.

150. Committal for trial

(1) If the court considers the evidence sufficient to put the accused on his trial, the court shall commit him for trial at the next sessions of the High Court and shall, until the trial, either admit him to bail or commit him to prison. The warrant of the court shall be sufficient authority for the detention of the person named therein.

(2) The magistrate shall then say to the accused—

> "I must warn you that you may not be permitted to give evidence of an alibi or to call witnesses in support of an alibi unless you have either given particulars to me now of the alibi and of the witnesses, or have given such particulars and names to this court within seven days from today",

or words to the like effect. If it shall appear to the court that the accused may not understand the meaning of the word "alibi" the court shall explain it to him.

(3) In the case of a corporation, the court may, if it considers that the evidence is sufficient to put the accused corporation on trial, make an order authorising the preferring of an indictment against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.

151. Complainant and witnesses to be bound over

(1) When an accused is committed for trial before the High Court, subject to the provisions of this Code relating to witnesses who are about to leave Saint Vincent and the Grenadines or who are ill or hurt and not likely to recover, the court committing him shall bind by recognisance, with or without sureties as the court may deem appropriate, the complainant and every witness to appear at the trial to prosecute, or to prosecute and to give evidence, or to give evidence, as the case may be, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by the direction given by the Director of Public Prosecutions under section 160.

(2) Notwithstanding subsection (1), if the complainant is acting on behalf of the Crown, the Director of Public Prosecutions, the Commissioner of Police, any department of Government or is a public officer acting in his official capacity, he shall not be required to be bound by any recognisance or to give any security.

152. Refusal to be bound over

If a person refuses to enter into such recognisance, the court may commit him to prison there to remain until after the trial unless in the meantime he enters into a recognisance.

153. Accused entitled to copy of depositions

An accused committed for trial before the High Court shall be entitled, at any time before the trial, to a copy of the depositions without payment.

154. Binding over witnesses conditionally

(1) When any person charged before a magistrate's court is committed for trial and it appears to the court, after taking into account anything which may be said by the prosecutor or the accused, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in the statement or evidence of the accused, or the evidence of the witness being merely of a formal nature, the court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice being given to him and not otherwise. If the witness has already been bound over it may direct that he shall be treated as having been bound over to attend conditionally as aforesaid. In either case the court shall transmit to the High Court in writing the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2) When a witness has been, or is to be treated as having been, bound over to attend the trial conditionally, the Director of Public Prosecutions or other person preferring the indictment or the person committed for trial may give notice, at any time before the opening of the sessions of the High Court to the magistrate's court and thereafter to the Registrar of the High Court, that he desires the witness to attend at the trial, and the magistrate's court or the Registrar, as the case may be, shall forthwith notify the witness that he is required to attend in pursuance of his recognisance.

(3) A magistrate's court, on committing an accused for trial, shall inform him of his right to require the attendance at the trial of any such witness and of the steps which he must take for the purpose of enforcing such attendance.

(4) Any document or articles produced in evidence before a magistrate's court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section, and marked as an exhibit shall, unless in any particular case the court orders otherwise, be retained by the court and forwarded with the depositions to the Registrar.

155. Depositions of person dangerously ill, etc., or about to depart from Saint Vincent and the Grenadines

Whenever it appears to a magistrate that any person who is dangerously ill or hurt and not likely to recover, or who is about to leave Saint Vincent and the Grenadines, is able and willing to give material evidence relating to any offence triable by the High Court on indictment and it is not practicable to take the deposition of such witness in accordance with the other provisions of this Code, the magistrate may of his own motion, and shall on the application of a prosecutor or an accused, take the statement in writing on oath of such person and shall subscribe the same and certify that it contains accurately the whole of the statement made by such person and shall add a statement of his reason for taking the same, the date and place where the same was taken, and the names of the persons, if any, present at the taking thereof.

156. Notice to be given of statement to be taken under section 155

If the statement referred to in section 155 relates to, or is expected to relate to, an offence for which any person has been charged or has been committed for trial, reasonable notice of the intention shall be served upon the prosecutor and the accused,

and if the accused is in custody he may, and shall if he so requires, be brought by the person in whose custody he is, under an order in writing of the magistrate, to the place where and at the time when the statement is to be taken.

157. Magistrate to deal with depositions under section 155 like other depositions

If any deposition taken under the provisions of section 155 relates to an offence the preliminary inquiry into which has ended, the magistrate taking it shall forward it to the Registrar to be placed with the other depositions in the case. If it relates to an offence with which some person has been charged and as to which the preliminary inquiry has not been concluded (whether it has been commenced or not) the magistrate shall deal with it like any other deposition taken in the matter under preliminary inquiry. A person so making a deposition shall not be called upon to enter into a recognisance to give evidence at the trial of the accused.

158. Depositions under section 155 admissible in evidence

(1) Every deposition taken under the provisions of section 155 shall be a deposition taken in the case to which it relates and, subject to the provisions of subsections (2) and (3), shall be admissible in evidence on the same conditions as other depositions.

(2) Such a deposition shall be admissible against the accused, although it may have been taken in his absence and may not have been read over to the witness in his presence and although neither he nor his counsel has any opportunity of cross-examining the witness, if it is shown that the accused, having received notice as aforesaid that such deposition was to be taken, refused or neglected to be present or to cause his counsel to be present when it was taken.

(3) Notwithstanding anything contained in subsection (1) or (2), if it is shown that the person whose evidence has been so taken has recovered from his illness or hurt, or is in Saint Vincent and the Grenadines, so as to be able to be present and give evidence at the sessions at which the accused is tried, such deposition shall not be read.

159. Transmission of depositions, etc.

In the event of a committal for trial, the written charge, the depositions, the statement and evidence, if any, of the accused, the recognisances of the complainant and the witnesses, the recognisances of bail, if any, and any documents or things which have been put in evidence shall be transmitted without delay by the court to the Registrar. An authenticated copy of the depositions, the statement and evidence of the accused, if any, and the documentary exhibits shall be supplied to the Director of Public Prosecutions and, if the charge was not laid by or on behalf of the Director of Public Prosecutions, the Commissioner of Police, any department of Government or a public officer acting in an official capacity, to the person laying the charge.

160. Director of Public Prosecutions may refer case back for further inquiry

(1) After receipt by the Director of Public Prosecutions of the depositions, etc., forwarded to him under section 159 he may, at any time, refer the case back to the committing court with directions to re-open the inquiry for the purpose of taking evidence, or further evidence, on a certain point or points to be specified and with such directions as the Director may think proper.

(2) Subject to any express directions which may be given by the Director of Public Prosecutions, the effect of any reference back to the magistrate's court shall be that the inquiry shall be re-opened and dealt with in all respects as if the accused had not been committed for trial.

161. Bill of indictment

No bill of indictment shall be preferred charging any person with an indictable offence unless—

(*a*) the person charged has been committed for trial for the offence; or

(*b*) the bill is preferred by the direction of the Court of Appeal or by the direction or with the consent of a judge:

Provided that, when the person charged has been committed for trial, the bill of indictment preferred against him may include, either in addition to or in substitution for the count charging the offence for which he was committed, any count founded on facts disclosed by the depositions.

162. Bill of indictment preferred by consent

(1) An application under section 161 for consent to the preferment of a bill of indictment may be made to a judge and shall be in writing and signed by the applicant or his counsel.

(2) Every such application shall—

(*a*) be accompanied by the bill of indictment which it is proposed to prefer and, unless the application is made by the Director of Public Prosecutions, shall also be accompanied by an affidavit by the applicant or, if the applicant is a corporation, by some director or other officer of the corporation, that the statements contained in the application are, to the best of the deponent's knowledge, information and belief, true; and

(*b*) state whether or not any application has previously been made under that section and whether there have been any committal proceedings, and the result of such application or proceedings.

(3) Where there have been no committal proceedings, the application shall state the reason why it is desired to prefer a bill without such proceedings and—

(*a*) there shall accompany the application proofs of the evidence of the witnesses whom it is proposed to call in support of the charge; and

(*b*) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that the case disclosed by the proofs is, to the best of the information, knowledge and belief of the applicant, substantially a true case.

(4) When there have been committal proceedings, and a magistrate's court has refused to commit the accused for trial, the application shall be accompanied by—

(*a*) a copy of the depositions; and

(*b*) proofs of any evidence which it is proposed to call in support of the charge so far as that evidence is not contained in the depositions,

and the application shall embody a statement that the evidence shown by the proofs and (except so far as may be expressly stated to the contrary in the application) the evidence shown by the depositions will be available at the trial, and that the case disclosed by the proofs and the depositions is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

(5) Unless the judge otherwise directs in any particular case, his decision on the application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any witnesses. If the judge thinks fit to require the attendance of the applicant or of any witnesses, their attendance shall not be in open court. Unless the judge gives direction to the contrary, when an applicant is required to attend he may attend by counsel.

(6) It shall be the duty of any person in charge of any depositions to give to any person desiring to make an application for leave to prefer a bill of indictment against the person who was accused when the depositions were taken, a reasonable opportunity to inspect the depositions and, if so required by him, to supply him with copies of the depositions or of any part thereof.

163. Mode of trial and preferment of indictment

(1) Unless the Director of Public Prosecutions has filed a *nolle prosequi* in accordance with the provisions of section 67, every person committed for trial or against whom a bill is preferred under the provisions of section 161 shall be tried on an indictment and such trial shall be before a judge and a jury empanelled in accordance with the provisions of the Jury Act.

(2) Every indictment shall be drawn up in accordance with the provisions of this Code and when signed shall be filed in the High Court together with such additional copies thereof as are necessary for service upon the accused person or persons.

(3) Where the accused has been committed for trial on a charge in respect of which the complaint was laid or on behalf of the Director of Public Prosecutions or by a police or other public officer acting in the course of his official duty, the indictment shall be signed by or on behalf of the Director of Public Prosecutions.

(4) Where the accused has been committed for trial on a charge in respect of which the complaint was laid by a person other than a person mentioned in subsection (3), the indictment shall be signed and filed by that person.

(5) Where leave has been given under section 162, the indictment shall be signed and filed by the applicant for such leave.

(6) Where a direction has been given by the Court of Appeal or by a judge for the preferment of a bill of indictment, the indictment shall be signed and filed by or on behalf of the Director of Public Prosecutions.

164. Offences to be specified in indictment

(1) Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

(2) Except as otherwise provided, the provisions of this section, sections 165, 166, and 167 and the Rules in the Third Schedule shall apply to charges in a magistrate's court as they apply to indictments.

165. Joinder of counts

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

(2) In relation to charges in a magistrate's court, the provisions of subsection (1) are subject to the provisions of section 70(6) and (7).

166. Joinder of two or more accused in one indictment

The following persons may be joined together in one indictment and may be tried together—

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

(*b*) persons accused of an offence and persons accused of abetment or an attempt to commit such offence or of assisting the offender;

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

(*d*) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same punishment under the same section of the Criminal Code, or any other law) committed by them jointly within a period of twelve months;

(*e*) persons accused of any offence under section 209, 216, 217, 218, 219 or 232 of the Criminal Code and persons accused of handling stolen goods under section 233 of that Code, such stolen goods being the subject matter of any such offence alleged to have been committed by the first-named person ("stolen goods" being construed in accordance with section 234 of that Code) or of abetting or attempting such offence;

(*f*) persons accused of any offence relating to counterfeit under Chapter XIV of the Criminal Code and persons accused of any other offence relating to the same counterfeit;

(*g*) persons charged with reference to the same theft (construed in accordance with section 234 of the Criminal Code) with having at the same or different times handled all or any of the stolen goods (construed in accordance with the same provisions).

167. Rules for the framing of indictments

(1) The provisions of the Rules set out in the Third Schedule shall apply with respect to all indictments, and, notwithstanding any rule of law to the contrary, an indictment shall not be open to objection in respect of its form or contents if it is framed in accordance with those Rules.

(2) Any person whose name is not known may be described as a person unknown.

(3) Without prejudice to the provisions of subsections (1) and (2), no charge shall be deemed to be objectionable or insufficient on any of the following grounds—

(*a*) it contains only one name of the accused;

(*b*) it contains only one name of the injured person;

(*c*) the name or identity of the owner of any property is not stated;

(*d*) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;

(*e*) it does not set out any document which may be the subject of the charge;

(*f*) it does not set out the words used where the words are the subject of the charge;

(*g*) the means by which the offence was committed is not stated;

(*h*) the district in which the offence was committed is not stated; or

(*i*) any person or thing is not described with precision:

Provided that, if it appears to the court that the interests of justice and the avoidance of prejudice to the accused so require, the court shall order that the prosecutor shall furnish particulars further describing or specifying any of the foregoing matters.

(4) Rules of court relating to indictments may be made under section 17 of the Court Order and such rules may supplement, replace, amend or repeal the Rules in the Third Schedule.

168. Notice of trial

The Registrar shall endorse on or annex to every indictment filed, and to every copy thereof delivered to an officer of the court for service thereof, a notice of the trial and such notice shall specify the particular sessions of the High Court at which the accused is to be tried on the said indictment and shall be in the following form or as near as may be—

"A.B.

Take notice that you will be tried on the indictment of which this is a true copy the sessions of the High Court to be held at ..... commencing on the ..... day of ....., 20.....".

169. Service of copy of indictment, etc., and notice of trial

(1) The Registrar shall deliver or cause to be delivered to the officer of court serving the indictment a copy thereof with the notice of trial endorsed thereon or annexed thereto together with copies of the depositions and, if there is more than one person committed for trial, then as many copies as there are accused persons.

(2) The officer of court shall, as soon as may be after having received the copy or copies of the indictment, depositions and notice of the trial and at least three days before the day for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial such copy or copies and explain to him the nature and exigence thereof.

(3) When any accused has been admitted to bail and cannot readily be found, the officer shall leave a copy of the indictment, depositions and notice of trial with an adult of his household dwelling with him at his dwelling house or with someone of his bail for him. If none such person can be found, the officer shall fix the copy of the indictment, depositions and notice of trial to the outer or principal door of his dwelling house or of any of his sureties.

(4) Nothing in subsection (1), (2) or (3) shall prevent any person committed for trial and in custody at the opening of or during any sessions of the High Court from being tried thereat if he shall assent to be so tried and no objection thereto be made on the part of the Crown.

(5) The officer serving the copy or copies of the indictment, depositions and notice of trial shall forthwith make to the Registrar a return of the mode of service thereof.

170. Postponement of trial

(1) The High Court, on the application of the prosecutor or the accused, if the Court considers that there is sufficient reason therefor, may postpone the trial of any accused to the next sessions of the Court or to a subsequent session and may respite the recognisances of the prosecutor and witnesses. In any such case the respited recognisances shall have the same force and effect as fresh recognisances to prosecute and give evidence at such subsequent sessions would have had.

(2) The High Court may give such directions for the amendment of the indictment and service of any notices which the court may deem necessary in consequence of any order made under subsection (1).

CHAPTER IX

171. Procedure where accused admits guilt at preliminary inquiry

(1) If, in a case not involving a charge of high treason, treason, murder or genocide, the accused in a statement made to the magistrate's court under section 146 admits that he is guilty of the offence with which he is charged, the magistrate may commit him to the High Court for sentence instead of for trial, and shall explain to him the procedure and shall say to him the following words, or words to like effect—

> "Do you wish the witnesses to appear again to give evidence against you before the High Court?".

(2) If the accused in answer to such question states that he does not wish the witnesses to be called again to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused, if willing to do so, and shall be filed with the depositions of the witnesses. If, however, the accused states that he does require the witnesses, other than any giving evidence as to character, the magistrate shall not commit the accused for sentence under the procedure in this Chapter but shall commit the accused for trial in accordance with the procedure in Chapter VIII.

(3) In a case to which this section applies, the magistrate shall bind over the witnesses to attend the proceedings before the High Court conditionally, upon reasonable notice being given to them by the Registrar that they are so required to attend in pursuance of their recognisance.

(4) The magistrate, in a case to which this section applies, shall order the accused to be committed for sentence before the High Court and in the meantime, by his warrant, shall commit him to prison to be safely kept there until the next sitting of the High Court unless he is admitted bail or otherwise delivered by due course of law.

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

172. Transmission of proceedings

(1) The magistrate shall, as soon as practicable after such committal, transmit the charge, depositions and any statement or evidence of the accused taken on the hearing of such charge to the Registrar, together with a copy of all such documents for the use of the Director of Public Prosecutions and, if the charge was laid other than by or on behalf of the Director of Public Prosecutions or other officer acting in the course of his official duty, for the use of the person who laid the charge.

(2) The Registrar shall, as soon as practicable after receiving the matters referred to in subsection (1), deliver them to a judge and to the Director of Public Prosecutions or such other person for whose use the Registrar is required to deliver them under the provisions of that subsection.

(3) The Director of Public Prosecutions, or someone on his behalf, or such other person to whom matters have to be delivered shall, as soon as practicable after receiving a copy of the record of the proceedings at the preliminary inquiry, sign and file an indictment against the person committed for sentence.

173. Accused to be brought before a judge to be dealt with

(1) As soon as conveniently may be after the filing of an indictment against a person committed for sentence, the Registrar shall issue a summons to the accused to appear and, if he is in custody, an order to the gaoler to bring the accused before a judge at a time to

be fixed by the judge. The Registrar shall notify the Director of Public Prosecutions or other person signing and filing the indictment accordingly.

(2) The accused shall be called upon to plead to the indictment in the same manner as if he had been committed for trial, and he may plead either that he is guilty of the offence charged or, with the consent of the prosecutor, of any other offence of which he might be convicted on the indictment.

(3) If the accused pleads not guilty, or if he pleads that he is guilty but it appears to the court upon examination of the depositions that he has not committed the offence charged in the indictment or any other offence of which he might be convicted on the indictment, a plea of not guilty shall be entered and the trial shall proceed as in other cases where that plea is entered. The judge shall postpone the case for trial by a jury at the regular sessions of the High Court and may remand the accused in prison or admit him to bail in the meantime.

(4) An accused who has been committed for sentence may plead *autrefois acquit*, *autrefois convict* or pardon, and in such case, unless the accused, the prosecutor and the judge agree to the issue being tried by the judge without a jury, the judge shall postpone the case for trial by a jury as provided in subsection (3).

174. Withdrawal by accused of consent to committal for sentence

(1) An accused may, at any time before he is brought up for sentence, give notice in writing to the Registrar that he desires to withdraw his consent to be committed for sentence, and in such case he shall not be taken before a judge for sentence but shall be deemed to have been committed for trial at the next sessions of the High Court and the provisions of Chapter X shall apply accordingly.

(2) The notice referred to in subsection (1) shall be filed on record in the Registrar's office and the Registrar shall notify the Director of Public Prosecutions or other person by whom the indictment was signed of the withdrawal of consent to committal for sentence.

(3) In the event of an accused withdrawing his plea of guilty, pleading not guilty or withdrawing his consent to committal for sentence, the Director of Public Prosecutions may refer the case back to the committing court in accordance with the provisions of section 160.

175. Powers of judge when dealing with persons committed for sentence

(1) A judge, when sitting to deal with persons committed for sentence, shall, subject to these provisions, possess all the powers, authorities and jurisdiction vested in the High Court with respect to the trial of criminal cases in the exercise of the ordinary criminal jurisdiction of such court.

(2) The Registrar or other proper officer of the court shall attend before a judge in any proceedings respecting persons committed for sentence and keep a record thereof in like manner as in other proceedings of the court.

176. Notice by person committed for trial of intention to plead guilty

(1) A person committed for trial, whether he is in custody or not, may, if he wishes to plead guilty and be sentenced prior to the regular sessions of the High Court, file with the Registrar a notice in writing to that effect and such notice shall be filed in the Registrar's office.

(2) In such cases as are mentioned in subsection (1), the Registrar shall notify a judge, the Director of Public Prosecutions and any other person by whom the indictment was signed and filed, of such notice and the subsequent proceedings shall be as in the case of a person committed for sentence and the provisions of sections 173, 174 and 175 shall apply.

176A. Committal for sentence in drug trafficking cases

(1) Notwithstanding the provisions of Chapter VII, in any case in which a Magistrate's Court convicts an accused person of any offence which is a drug trafficking offence within the meaning of section 2 of the Drug Trafficking Offences Act, 1993, and in which an oral application is then made by the prosecution to the Magistrate in that behalf, the Magistrate shall thereupon, without proceeding to either sentence or otherwise deal with the convicted person, stay further proceedings in his court and shall commit the convicted person to the High Court for sentence and shall commit him to prison in the meantime.

(2) The Magistrate shall transmit the minute or memorandum of conviction together with the record of the proceedings had before him to the Registrar, together with a copy of all such documents for the use of the Director of Public Prosecutions.

(3) Section 173(1) shall apply, *mutatis mutandis*, to a committal for sentence under this section as it does to a committal for sentence under section 171.

[Section 176A inserted by Act No. 4 of 1994.]

CHAPTER X

Procedure in Trials before the High Court

177. Bench warrant where accused does not appear

Where any person against whom an indictment has been preferred, and who is at large, does not appear to plead to the indictment, whether he is under recognisances or not, the court may issue a warrant for his arrest.

178. Bringing up prisoner for trial

If any person against whom an indictment is preferred is at the date appointed for trial thereof confined in prison for some other cause, a judge, by order in writing, may direct the officer in charge of the prison to bring up the accused as often as may be required for the purpose of the trial and such order shall be sufficient authority therefor and shall be obeyed by the officer in charge of the prison. Any such person shall for all purposes be deemed to be in lawful custody during the period when he is absent from prison in accordance with any such order.

179. Arraignment of accused

(1) An accused to be tried before the High Court upon an indictment shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the indictment shall be read over to him by the Registrar or other officer of the court and explained or interpreted to him if need be, and such accused shall be required to plead instantly thereto, unless he shall object that a copy of the indictment has not previously been served upon him under the provisions of section 169 or he raises objection to the indictment as hereafter in this Code provided.

(2) An accused shall not be arraigned in the presence of persons from among whom the court intends to select a jury to try him should he enter a plea of not guilty, but where for any reason this provision is not complied with, the judge may, in his absolute discretion (from which there shall be no appeal), waive the irregularity if he considers that the accused has not suffered any prejudice thereby. If the judge considers that an accused has been prejudiced by reason of the non-compliance with the provision he shall terminate the proceedings and cause the trial to be commenced afresh with a jury which excludes any person in whose presence the accused had been arraigned and any person

who had already been empanelled (whether or not such person has as yet been sworn) in the course of the aborted proceedings.

(3) In the case of a corporation, the corporation may, by its representative, enter a plea in writing, and if either the corporation does not appear by its representative or, though it does appear, fails to enter a plea, the court shall cause a plea of not guilty to be entered.

(4) For the purposes of this section, a representative of a corporation need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by the managing director of the corporation or by any persons (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purpose of this section shall be admissible without further proof as *prima facie* evidence that person has been so appointed.

180. Objection to indictment on grounds of insufficiency of particulars

(1) No count in an indictment shall be quashed upon the ground only that it contains insufficient particulars, but in any such case if objection is taken to any count by the accused or if, in default of such objection, it appears to the court that the interest of justice so requires, the court may order that the prosecution furnish such particulars in support of the charge as it may consider necessary for a fair trial and a copy of any such particulars shall be given to the accused or his counsel without charge, and the trial shall proceed thereafter as if the indictment had been amended in conformity with the particulars.

(2) Every objection to any indictment on any of the grounds referred to in subsection (1), or for any formal defect on the face thereof, shall be taken immediately after the indictment has been read over to the accused and not later.

181. Amendment of indictment, separate trial and postponement of trial

(1) Where, before a trial upon indictment or at any stage of such trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court considers necessary to meet the circumstances unless, having regard to the merits of the case, the required amendments cannot be made without injustice. Any such amendments shall be made upon such terms as the court shall seem just.

(2) When an indictment is amended under the provisions of this section, a note of the order for amendment shall be endorsed on the indictment, and thereafter the indictment shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(3) Where, before a trial upon indictment or at any stage of such trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any reason it is desirable to direct that where there are two or more accused they should be tried separately, the court may order the separate trial of any count or counts in such indictment or the separate trial of any accused charged in the same indictment.

(4) Where, before a trial upon indictment or at any stage of such trial, the court is of the opinion that the postponement of the trial is expedient as a consequence of the exercise of any power of the court under this section or any other provision of this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

(*a*) if such an order is made during a trial, the court may order that the jury is to be discharged from giving a verdict on the count or counts the trial of which is postponed or on the indictment as the case may be;

(*b*) the procedure on the separate trial of a count shall be the same in all respects as if the count had been framed in a separate indictment, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced; and

(*c*) the court may make such order as to admitting the accused to bail and as to enlargement of recognisances and otherwise as the court may think fit.

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

182. Quashing of indictment

(1) No objection to an indictment shall be taken by way of demurrer, but if any indictment does not state in substance an indictable offence or states an offence not triable by the court, the accused may move the court to quash it or in arrest of judgement.

(2) If the motion is made before the accused pleads, the court shall either quash the indictment or amend it, if having regard to the interest of justice, it considers that it is proper that it should be amended.

(3) If the defect in the indictment appears during the trial and the court does not think fit to amend it, it may, in its discretion, quash the indictment or leave the objection to be taken in arrest of judgement.

(4) If the indictment is quashed, the court may direct the accused to plead to another indictment founded on the same facts when called on at the same session of the court.

183. Charge of previous conviction

When an indictment contains a statement charging the accused with having been previously convicted, he shall not at the time of his arraignment be required to plead to it unless he pleads guilty to the rest of the indictment, nor shall such statement be mentioned to the jury when the accused is given in charge to them nor when they are sworn. The accused shall not be tried upon such statement if he is acquitted on the count or counts to which it is relevant. If however, he is convicted on any count to which such statement is relevant he shall be asked whether he has previously been convicted as alleged or not, and, if he says that he has not or does not say that he has been so convicted, the jury shall be charged to inquire into the matter as in other cases.

184. Pleading to the indictment

When the accused is called upon to plead, he may plead either guilty or not guilty, or such other special pleas as are provided in this Code.

185. Refusal or incapacity to plead

(1) If an accused, upon being arraigned upon any indictment, stands mute of malice or will not, or by reason of infirmity cannot, answer directly to the indictment, the court may, if it thinks fit, order the Registrar or other proper officer of the court, to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

(2) The provisions of this section are without prejudice to the provisions of section 115 relating to incapacity to plead.

186. Procedure when plea made

(1) If upon arraignment the accused pleads guilty, he may be convicted thereon.

(2) If upon arraignment the accused pleads not guilty, or if a plea of not guilty is entered upon his behalf in accordance with the provisions of section 185, the court shall proceed to try the case.

(3) Every plea, including any special plea, shall be entered by the Registrar, or other proper officer of the court, on the back of the indictment or on a sheet of paper annexed thereto.

187. Power to postpone or adjourn trial

(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of, or to adjourn, any trial, the court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may remand the accused to prison or other place of security or may admit the accused to bail. During any remand the court may at any time order the accused to be brought before it.

(2) Subject to the provisions of subsection (1), when the accused is given in charge to the jury the trial shall proceed continuously subject to such adjournment from day to day as the length of the proceedings requires.

188. Procedure relating to jurors

All matters relating to the calling, challenging, empanelling or swearing of jurors, or otherwise in respect of any matter relating to juries for which no express provision is made in this Code, shall be conducted in accordance with the provisions in that behalf as contained in the Jury Act.

189. Giving accused in charge of jury

When a full jury have been sworn, the Registrar shall call the prisoner to the bar and addressing the members of the jury, shall state the substance of the offence charged in the indictment and shall say “to this indictment he has pleaded not guilty and it is your charge to say having heard the evidence, whether he be guilty or not guilty”.

190. Case for the prosecution

After the accused has been given in charge of the jury or when the jury have been sworn, the counsel for the prosecution may open the case against the accused and adduce evidence in support of the charge.

191. Additional evidence for the prosecution

(1) No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at his trial unless the accused has received reasonable notice in writing of the intention to call such witness.

(2) Such notice as is mentioned in subsection (1) shall state the witness’s name and give the substance of the evidence which he intends to give. It shall be for the court to determine in any particular case what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness’s evidence and decided to call him as a witness.

(3) Where the prosecution becomes aware that a witness who was called at the preliminary inquiry proposes to give material evidence which he did not give at the preliminary inquiry, the prosecution shall, as soon as possible, give the accused notice in

writing of the substance of the new evidence, and such notice shall be deemed to form part of the depositions.

192. Cross-examination of prosecution witnesses

Subject to the provisions of the Evidence Act, the witnesses called for the prosecution shall be the subject to cross-examination by the accused or his counsel, and to re-examination by the prosecution.

[Chapter 158.]

193. Deposition may be read in certain cases

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

(2) The conditions referred to in subsection (1) are the following—

(*a*) the deposition must be the deposition either—

(i) of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 154,

(ii) of a witness whose deposition was taken in accordance with the provisions of section 155 and who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Saint Vincent and the Grenadines or so ill as not to be able to travel,

(iii) of a witness whose deposition was taken at the preliminary inquiry, but who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Saint Vincent and the Grenadines or so ill as not to be able to travel, or

(iv) of a witness who is proved to be kept away by means of the procurement of the accused or on his behalf; and

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

(3) The provisions of this section shall not have effect in any case in which it is proved—

(*a*) that the deposition was not in fact signed by the magistrate before whom it purports to have been signed; or

(*b*) that the deposition is that of a witness whose attendance at the trial was stated to be unnecessary and the witness has been duly notified subsequently that he is required to attend the trial, unless the provisions of subsection 2(*a*)(iii) or (iv) apply.

194. Statement or evidence of accused

The statement or the evidence (if any) of the accused duly recorded by or before the committing court, and whether signed by the accused or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement or evidence did not sign it.

195. Close of case for prosecution

(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused, or any one of several accused, committed the offence, shall, after hearing any arguments which the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused before the committing court has been given, the court, if it considers that there is evidence that the accused or any one or more of several accused committed the offence, shall inform each such accused of his right to address the court, either personally or by his counsel, if any, to give evidence on oath on his own behalf explaining to him that if he does so he will be liable to cross-examination, or to remain silent, and to call witnesses in his defence. In all cases the court shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused himself. Upon being informed thereof the judge shall record the same.

196. Case for the defence

Subject to the provision of section 107(2), the accused or his counsel may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused may then give evidence on oath on his own behalf and he or his counsel may examine his witnesses (if any), and after their cross-examination by the prosecution may re-examine them.

197. Additional witnesses for the defence

The accused shall be allowed to examine any witness not previously bound over to give evidence at the trial if such witness is in attendance. If he apprehends that any such witness will not attend the trial voluntarily he shall be entitled to apply for the issue of process to compel such witness's attendance:

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

198. Notice of alibi

(1) On trial before the High Court the accused shall not, without leave of the court, adduce evidence in support of an alibi unless he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the accused shall not without the leave of the court call any other person to give such evidence unless—

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

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

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

(*d*) if the accused is notified, by or on behalf of the magistrate, that the witness has not been traced by the name or at the address given, he forthwith gives

notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the accused was not informed by the magistrate before committal for trial of the requirements of this section.

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

(5) Any notice purporting to be given under this section on behalf of the accused by his counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(6) A notice given under subsection (1) shall either be given in court during, or at the end of, the preliminary inquiry, in which case it shall be recorded in full in the record of proceedings, or be delivered in writing to the magistrate before the end of the prescribed period. A notice under subsection (2)(*c*) or (*d*) shall be delivered in writing to the magistrate.

(7) In this section—

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

"prescribed period" means the period of seven days from the end of the preliminary inquiry.

199. Evidence in reply

If the accused adduces evidence in his defence introducing new matter which the prosecution could not reasonably have foreseen, the court may allow the prosecution to call evidence in reply to rebut such new matter.

200. Court may require witness to be called

If the court is of the opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecution to call him and, if the witness is not in attendance, may make an order that his attendance be procured and adjourn the further hearing of the case until the witness attends, or may, on the application of the accused, discharge the jury and postpone the trial.

201. Summing up by the judge and consideration of verdict by the jury

(1) When the case on both sides is closed the judge shall, as necessary, sum up the law and the evidence in the case.

(2) After the summing up, the jury shall consider their verdict on the indictment or, if there are more than one count, on each count in the indictment.

202. Recording of verdict

The verdict, when returned by the jury and accepted by the court, shall be entered by the Registrar or other proper officer of the court on the back of the indictment, or on a sheet of paper annexed thereto, before the jury is discharged.

203. Verdict of not guilty

If the jury find the accused not guilty, he shall be immediately discharged from custody on that indictment or, if there are more than one count, on any count on which he is so found.

204. Calling upon the accused

If the accused is convicted, or if the accused pleads guilty, the Registrar or other proper officer of the court shall ask him if he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect upon the validity of the proceedings.

205. Motion in arrest of judgement

(1) The accused may at any time before sentence, whether on his plea or otherwise, move in arrest of judgement on the ground that the indictment does not, after any amendment which the court is willing and has power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting or adjourn the hearing thereof to a future date to be fixed for that purpose.

(3) If the court finds in favour of the accused he shall be discharged on that indictment or, if there are more than one count, on any count on which it so finds.

206. Evidence for arriving at proper sentence

The court may, before passing sentence receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed, and may hear counsel on any mitigating or other circumstances which may be relevant.

207. Sentence

(1) If no motion in arrest of a judgement is made, or if the court decides against the accused upon such motion, the court may sentence the accused at any time during the session of the court in which the trial took place or may, in its discretion discharge him on his own recognisances or on that of such sureties as the court may think fit, or both, to appear and receive judgement at the same or some future sitting of the court or when called upon.

(2) A sentence imposed under subsection (1) may be varied or rescinded by the judge at any time during the same session of the court during which it was imposed, and in such event shall be deemed to have taken effect from the day on which the original sentence was imposed, unless the court otherwise directs:

Provided that, for the purpose of any provision relating to the time within which an appeal may be made, a sentence which has been varied shall be deemed to have been imposed on the date on which it was so varied.

208. Recording of judgement

The judgement or sentence of the court shall be entered by the Registrar or other proper officer of the court on the back of the indictment or on a sheet of paper annexed thereto.

209. Objection cured by verdict

No judgement shall be stayed or reversed on the ground of any objection which, if stated after the indictment was read over to the accused or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

210. Time for raising objections

(1) The proper time for making objections at a trial on the grounds of improper admission or rejection of evidence, or any irregularity or informality in the proceedings (other than defects in the indictment) shall be as follows—

(*a*) if the objection is to admission or rejection of evidence, at the time of such admission or rejection;

(*b*) if the irregularity or informality occurs before verdict, objection shall be made before verdict;

(*c*) if the irregularity or informality occurs in the giving of the verdict, or at any time before sentence is pronounced, the objection shall be made before sentence is pronounced,

and the court shall, so far as possible, correct any irregularity or informality which occurs in the proceedings and may direct the trial to be recommenced, for this purpose, at any stage before the verdict is given.

(2) Nothing in this section shall be construed as being in derogation of any powers conferred upon the Court of Appeal to entertain any appeal in the exercise of its criminal jurisdiction.

211. Minute of proceedings in trial before High Court

(1) The Registrar shall cause to be preserved all indictments and all depositions filed with or transmitted to him, and he shall keep a book, to be called the Crown Book and such a book shall be the property of the court and shall be deemed a record thereof.

(2) In the Crown Book the Registrar shall enter the name of the judge and a memorandum of the substance of all proceedings at every trial and of the result of every trial:

Provided that nothing herein contained shall dispense with the taking of notes by the judge presiding at the trial.

(3) Any erroneous or defective entry in the Crown Book may at any time be amended by the judge in accordance with the facts. Any such amendment shall be signed and dated by the judge.

(4) The indictment, the plea or pleas thereto, the verdict and the judgement or sentence of the court shall form and constitute the record of the proceedings in each case and shall be kept and preserved in the office of the court as of record.

CHAPTER XI

Appeals from a Magistrate's Court

212. Appeal from decision of a magistrate's court

(1) Save as hereafter in this Code provided, any person who is dissatisfied with any judgement, sentence or order of a magistrate's court in any criminal cause or matter to which he is a party may appeal to the Court of Appeal against such judgement, sentence or order, whether by motion on matters of law or fact (or both) or by way of case stated on a point of law only as hereafter provided, and the Court of Appeal shall have jurisdiction to hear and determine any such appeal in accordance with the provisions of this Chapter.

[Subsection (1) amended by Act No. 13 of 2007.]

(2) For the purposes of any appeal, the Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter other than those in which the

proceedings were instituted and carried on as a private prosecution and in which the conduct of such proceedings has not been taken over by the Director of Public Prosecutions.

212A. Appeal from decision of a magistrate's court

(1) A complainant may, in accordance with subsection (2), appeal to the Court of Appeal against any judgement, sentence or order of a magistrate's court.

(2) An appeal under subsection (1) may be by way of motion on matters of law or fact (or both) or by way of case stated on a point of law only as hereinafter provided.

(3) The provisions of this Chapter relating to appeals from a magistrate's court shall, with such modifications as may be applicable and necessary, apply to the procedure and other matters in an appeal by the complainant in the same manner as it applies to an appeal by any other person.

[Section 212A inserted by Act No. 13 of 2007.]

213. Magistrate to inform accused of right of appeal

(1) When any person is convicted by a magistrate's court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal. A note shall be made at the time by the magistrate that such information has been given by him to such person, and such note shall be conclusive as to the provisions of this section having been complied with.

(2) Upon being so informed, the convicted person may then and there give oral notice of his intention to appeal, and such notice shall be recorded by the magistrate and by the prosecutor.

(3) An appellant who has not given notice of appeal under subsection (2), or who has given notice under that subsection but has not at the same time stated the general grounds of his appeal, within twenty-one days after the day upon which the decision was given from which the appeal is made, shall serve a notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate's court, stating his intention to appeal and of the general grounds of his appeal.

(4) Notwithstanding anything contained in subsection (2) or (3), any person aggrieved by the decision of a magistrate's court may, upon notice to the other party, apply to the Court of Appeal for leave to extend the time prescribed within which such notice of appeal referred to in this section may be served. The court upon hearing such application may extend such time as it deems fit, and may do so either before or after the expiration of the time so prescribed.

214. Limitations on right of appeal

No appeal shall be allowed in a case in which the accused has pleaded guilty and has been convicted by a magistrate's court on such plea, except as to the extent or legality of the sentence, unless the plea is alleged to have been equivocal or not voluntary.

215. Appeal to operate as a stay

(1) An appeal shall have the effect of suspending the execution of the decision appealed against until the appeal shall have been determined, and shall be on a motion or by special case stated as hereafter provided.

(2) Notwithstanding the provisions of subsection (1)—

(*a*) where the decision involves a sentence of imprisonment, the filing of an appeal shall not require that the convicted person be released from custody except in accordance with the provisions of section 218; and

(*b*) where the decision involves the cancellation or suspension of any licence to drive a motor vehicle, such licence shall be deemed to be cancelled or suspended until the determination of the appeal unless any court shall direct otherwise upon application made by the appellant.

216. Recognisance to be taken

The appellant shall, within seven days after the day on which he served notice of his intention to appeal, enter into a recognisance before a magistrate, with or without sureties as the magistrate may direct, conditioned to prosecute the appeal to judgement thereon of the court, and to pay such costs as may be awarded by it. If the magistrate thinks it expedient, the appellant may instead of entering into recognisances give such other security by deposit of money with the magistrate's court or otherwise as the magistrate deems sufficient:

Provided that if the complainant is acting on behalf of the Crown, the Director of Public Prosecutions, the Commissioner of Police or any department of the Government or is a public officer acting in his official capacity, he shall not be required to be bound by any recognisance or to give any security.

217. Transmission of appeal papers

As soon as the appellant has filed the notice of appeal and has complied with any requirements of section 215, the magistrate's court shall without delay transmit to the Court of Appeal a copy of the conviction, order or judgement and all papers relating to the appeal. If the appellant is represented by counsel, such counsel shall lodge with the Registrar and serve upon the respondent, not less than twenty-one days before the date appointed for the hearing of the appeal, a notice containing particulars of matters of law or fact in regard to which the magistrate's court is alleged to have erred.

218. Admission of appellant to bail

(1) Subject to the provisions of sections 43, 44, 45, 46, 47, 48, 49, 50 and 51, where the appellant is in custody, a judge or the magistrate's court may, if in the circumstances of the case he or it thinks fit, order that he be released on bail, with or without sureties, pending the determination of the appeal:

Provided that if the appeal is abandoned or withdrawn or is dismissed, any such order for bail shall forthwith be cancelled.

(2) Where the appellant is released on bail or the sentence is suspended pending an appeal, any time during which he is at large after being so released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is subject:

Provided that, in the case of an appellant whose sentence is suspended but who is not released from custody, the court hearing the appeal, in its discretion, may order that the time so spent in custody, or any part thereof, awaiting the hearing of the appeal, may be included in computing the terms of the sentence.

(3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period in custody during such suspension be treated in the same manner as a prisoner awaiting trial.

219. Case stated

In all cases of appeal by way of case stated, the appellant shall, within the times and in the manner and form hereinbefore prescribed, serve a notice of appeal and enter into recognisances. The appellant shall, within seven days after the day on which the magistrate's court gave the decision from which the appeal is made, apply to such court to state a special case for the purpose of the appeal, setting forth the facts of the case and

the grounds on which the proceeding is questioned and the grounds of the court's decision.

220. Remedy if case stated refused

A magistrate may refuse to state a case if he considers the matter is frivolous, and shall on request deliver to the appellant a certificate of refusal, and thereupon the appellant may apply to the Court of Appeal for an order requiring the case to be stated:

Provided that a magistrate shall not refuse to state a case where the application for that purpose is made to him by, or under the direction of, the Director of Public Prosecutions.

221. Duty of magistrate's court as to case stated

(1) A magistrate, upon receiving the application of the appellant or an order of the Court of Appeal in that behalf, as the case may be, shall, subject to section 220 draw up the special case, concisely setting forth such facts and documents, if any, as may be necessary to enable the Court to decide the question raised in the case. Thereafter the magistrate shall forthwith transmit the same together with a copy of the conviction, order or judgement appealed from and all documents alluded to in the special case to the Registrar who, on application of either party, shall supply such applicant with a copy of the case stated on payment for the same of any prescribed charge.

(2) A case stated under the provisions of this section, in addition to any other matter which appears to the magistrate to be relevant, shall set out—

(*a*) the charge, summons, or complaint in respect of which the proceedings arose;

(*b*) the facts found by the magistrate's court to be admitted or proved;

(*c*) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(*d*) any submission of law made by or on behalf of the accused during the trial or inquiry;

(*e*) the finding and, in the case of conviction, the sentence of the magistrate's court;

(*f*) any question of law, the magistrate or any of the parties desires to be submitted for the opinion of the Court of Appeal; and

(*g*) any question of law which the Director of Public Prosecutions may require to be submitted for the opinion of the Court of Appeal.

222. Appellant entitled to copies of evidence; setting down for argument

(1) On an appeal by motion, the appellant, on serving notice on the magistrate's court of his intention to appeal and on entering into recognisances as aforesaid, shall be entitled to receive with all convenient speed a copy of the evidence taken by the court in the case and also a copy of the conviction, order or judgement made or given.

(2) Whether an appeal be by way of motion or case stated, the Court of Appeal shall set the appeal down for argument on such day as it may direct, and shall cause notice of the same to be published in such manner as the court may direct:

Provided that, except when otherwise agreed by the parties, not less than seven days notice shall be given by the court of the date appointed for the hearing of an appeal.

223. Appeal not a re-hearing unless the court so directs

On an appeal by motion, unless the court considers the justice of the case requires a re-hearing, the appellant shall begin, and unless he satisfies the court that it is necessary to call on the respondent, the conviction, order or judgement shall be confirmed:

Provided that, if the court directs a re-hearing, the respondent if the issue is with him, shall begin and prove his case, and the court may, if the justice of the case requires it, adjourn the hearing to some convenient day.

224. Procedure on hearing of appeal on motion

At the hearing of an appeal by motion, the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely, and shall not, unless by leave of the court, go into any matters not raised by such statement, nor shall he be entitled to examine any witnesses not examined at the hearing of the case before the magistrate's court unless he has given to the respondent three clear days' notice in writing of the names and addresses of such witnesses and of the substance of the evidence they will give and unless he has subsequently obtained the leave of the court to the examination thereof.

225. Court on hearing an appeal on motion to decide on facts as well as law

On an appeal by motion, the court may draw inferences of fact from the evidence given before the magistrate's court, and, subject to the due notice having been given as hereinbefore mentioned, may hear any further evidence tendered by the appellant, and may take and admit if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law.

226. Appeal by special case, court confined to facts and evidence stated therein

On appeal by special case, the court shall entertain such appeal on the ground only that the decision of the magistrate's court was erroneous in point of law, or in excess of jurisdiction and only upon the facts stated and the evidence mentioned in the special case. The court may remit the case to the magistrate's court for amendment or re-statement if necessary, or for re-hearing and determination in accordance with such directions as may be deemed necessary.

227. Powers on hearing appeals

The court may adjourn the hearing of the appeal, and may upon the hearing thereof confirm, reverse, vary or modify the decision of the magistrate's court or remit the matter with the opinion of the court thereon to the magistrate's court, or may make such order in the matter as it may think just, and may by such order exercise any power which the magistrate's court might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the magistrate's court.

228. Costs on appeal

The court hearing any appeal may make such order as to the costs to be paid by either party as it may think just:

Provided that no magistrate shall be liable to any costs in respect of any appeal against his decision.

229. Where appeal is abandoned court may give respondent his costs

Where an appeal is abandoned or withdrawn the court, on proof of notice of appeal having been given to the respondent, may make an order that the respondent shall receive such costs as the court may allow.

230. No appeal on point of form or matter of variance

No judgement shall be given in favour of the appellant if the appeal is based on an objection to any charge, complaint, summons or warrant for any alleged defect therein in matters of substance or for any variance between such charge, complaint, summons or warrant and the evidence adduced in support thereof, unless it be proved that such objection was raised before the magistrate's court.

231. Court may decide on merits notwithstanding any defect in form

In any appeal, the court may hear and determine the case upon the merits, notwithstanding any defect in form or otherwise in the conviction, order or judgement, and if the appellant is found guilty the conviction, order or judgement shall be confirmed and, if necessary, amended.

232. Defect in order or warrant or commitment not rendered void

No conviction or order shall for want of form be quashed or removed by *certiorari* into the High Court or the Court of Appeal, and no warrant or commitment shall be held void by reason of any defect therein, if it be therein alleged that the party has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there be a good and valid conviction or order to sustain the same.

233. Where conviction confirmed, warrant may be issued as though no appeal has been made

(1) Whenever the decision of a magistrate's court is confirmed on appeal, the Registrar shall inform the magistrate's court of such confirmation, and thereupon the magistrate's court may issue a warrant of distress or commitment, or writ of execution, as the case may be, for enforcing such decision in the same manner as though no appeal had been brought.

(2) Whenever the decision is not confirmed, the Registrar shall send to the magistrate's court, for entry in the register of that court and shall also endorse on the conviction, order or judgement appealed against, a memorandum of the decision of the Court of Appeal. Whenever any copy or certificate of such conviction, judgement or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the decision on appeal in every case where such copy of certificate would be sufficient evidence of such conviction, order or judgement.

CHAPTER XII

Miscellaneous

234. Power to issue directions of the nature of *habeas corpus*

The High Court may whenever it thinks fit direct—

(*a*) that any person within the limits of Saint Vincent and the Grenadines be brought before it to be dealt with according to law;

(*b*) that any person illegally or improperly detained in public or private custody within such limits be set at liberty.

235. Power to issue writs

The High Court may, in the exercise of its criminal jurisdiction, issue any writ which may be issued by the High Court of Justice in England.

236. Rules for sections 234 and 235

Without prejudice to the generality of section 240, rules may be made under section 17 of the Court Order for the purpose of regulating and providing for the procedure in cases under sections 234 and 235.

237. Code not to affect powers conferred by other Acts

Nothing in this Code shall be construed to affect or limit the powers conferred upon any court by the Probation of Offenders Act, or the Juveniles Act.

[Chapter 179, Chapter 231.]

238. Seizure of property obtained by offence

(1) Any court may order the seizure of any property which there is reason to believe has been obtained by, or is the proceeds or part of the proceeds of, any offence, or into which the proceeds of any offence have been converted. In such case the court may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twenty-four months from the date of such seizure, the property or the proceeds thereof, shall vest in the Accountant-General and shall be paid into the Consolidated Fund.

(2) Any court may order the seizure of any books, documents, instruments, materials, or things which there is reason to believe are provided, or prepared or being prepared, with a view to the commission of any offence and may direct them to be held and dealt with in the same manner as property seized under subsection (1).

(3) Any order made under this section may be enforced by means of a search warrant which, upon being satisfied by evidence on oath that there is reasonable cause for the issue of such warrant, any such court is hereby authorised to issue for the purpose.

239. Copies of proceedings

(1) If any person affected by any order made or judgement passed in any proceedings under this Code desires to have a copy of such order or judgement, or of any deposition or other part of the record in any such proceedings, he shall, upon making application for such copy, be furnished therewith, provided he pays for the same according to such scale as may be prescribed, unless in any particular case the court directs that it be furnished free of cost.

(2) Nothing in subsection (1) shall affect the provisions of sections 110 and 153 giving entitlement to judgements and depositions free of charge.

240. Rules and forms

(1) The power conferred on the Chief Justice and any two judges of the Supreme Court to make rules of court, under section 17 of the Court Order, shall be deemed to extend to permit the making of rules prescribing anything required to be prescribed under the provisions of this Code, other than section 79(6), and generally for the carrying into effect of the provisions of this Code.

(2) The power to make rules shall include the power to prescribe forms.

(3) The forms set out in the Second Schedule shall be used, with such changes as may be necessary for the purposes of any case, for the purposes to which they are applicable.

(4) Any forms in force and applicable to criminal proceedings immediately before the coming into force of this Code shall, in so far as they relate to purposes not provided for in the Second Schedule, with such additions and variations, if any, as this Code may require, continue to be used.

(5) Any form which has been issued under the hand of a judicial officer or a court before the coming into force of this Code shall continue to be in full force and effect, notwithstanding that such form does not correspond with a form in the Second Schedule.

(6) Rules made under section 17 of the Court Order may amend, revoke or add to the forms set out in the Schedule.

(7) All fees, costs and charges in force under any written law repealed by this Code shall remain in force unless and until they are revoked.

(8) For the purpose of this section, **"form"** includes any summons, warrant, bail, bail bond and any other document whatsoever relating to or concerned with criminal practice or procedure.

241. Saving

Notwithstanding any repeal or amendment effected by section 241(1) or (2) of the Criminal Procedure Code, 1988, to the laws specified in the Fourth Schedule to that Code, where any criminal proceedings continue to be governed by reason of section 243 of this Code by a law so repealed or amended, such law shall, for the purpose of those proceedings, be deemed to be still in force or unamended, as the case may be, as it was immediately before the 30th October, 1989, and any order made, direction given, security taken or other matter whatever may be enforced under the provisions of such law.

242. Power of Director of Public Prosecutions

Where in any law it is provided that certain named officers may institute criminal proceedings but the Director of Public Prosecutions is not named therein, the Director of Public Prosecutions shall nevertheless be entitled to institute criminal proceedings under that law.

243. Application

(1) The provisions of this Code, other than this section, shall not apply to any criminal proceedings which have commenced and are in being immediately before the coming into force of this Code and such proceedings shall continue to be governed by the law in force immediately before such date.

(2) For the purposes of subsection (1), criminal proceedings shall be deemed—

(*a*) to have commenced when a magistrate's court has begun to try a case summarily by taking a plea therein or has begun to take depositions in a preliminary inquiry; and

(*b*) to be in being—

(i) in the case of a summary trial, until any appeal in respect thereof has been determined and whether or not notice of such appeal was given before or after the coming into force of this Code, and

(ii) in the case of proceedings by way of preliminary inquiry, until after any trial on indictment has been concluded, or any person committed for sentence has been sentenced, and whether or not the accused has been committed for trial or sentence before or after the coming into force of this Code.

(3) Any summons, warrant, complaint or other process which has been issued, or any security given or recognisance entered into before the coming into force of this Code in respect of criminal proceedings to which this Code applies shall be valid and continue to be in force and may be enforced under the provisions of this Code for the purpose of those proceedings.

(4) Notwithstanding anything contained in this Code and in particular subsection (1) of this section, sections 9 to 16 shall not apply in respect of any offence committed before the 30th October, 1989, and the provisions in force immediately before the 30th October, 1989, shall apply to the mode of trial of such offences.

244. Removal of difficulties

If any difficulty shall arise in bringing into operation any of the provisions of this Code, or in respect of the transition to the procedure provided by this Code from the procedure in relation to criminal proceedings in force immediately before the date of commencement of this Code, a judge may issue directions, either generally or in respect of any particular case or class of cases, as to the procedure to be followed, as may seem to him to be necessary for removing any such difficulty.

First Schedule

[Section 9.]

Offences which are triable both summarily and on indictment

1. Any offence punishable with not more than two years imprisonment.

2. Offences against the following sections of the Criminal Code—sections 53(2), (10) and (11), 75, 83(*b*), 107, 109, 110, 112, 125(1), 127(*a*), 174, 178, 184, 185, 193, 197, 199, 217, 228, 237, 268 and 269.

[Paragraph 2 amended by Act No. 62 of 1992 and by Act No. 36 of 2004.]

3. Offences against the following sections of the Criminal Code—sections 215, 219, 223, 224, 225, 226, 233 and 267 (other than destroying or damaging property by fire); provided that an accused has no right to elect a trial on indictment where the value involved, measured in accordance with the provisions hereunder, is less than three thousand dollars.

[Paragraph 3 amended by Act No. 62 of 1992.]

4. (*a*) Aiding, abetting, counselling or procuring the commission of any offence mentioned in paragraph 1, 2 or 3;

(*b*) attempting to commit any offence so mentioned;

(*c*) inciting another to commit any offence so mentioned; and

(*d*) assisting an offender who has committed any offence so mentioned.

How value involve to be measured

Offence	*Value involved*	*How measured*
Offences under section 267.	As regards property alleged to have been destroyed, its value.	What the property would probably have cost to buy in the open market at the time of the offence—
	As regards property alleged to have been damaged, the value of the alleged damage.	(*a*) if immediately after the time of commission to the offence the damage was capable of repair— (i) what would probably then have been the market price for the repair of the damage, or (ii) what the property alleged to have been damaged would probably have cost to buy in the open market at that time,

		whichever is the less; or (*b*) if immediately after the commission of the offence the damage was beyond repair, what the property would probably have cost to buy in the open market at that time.
Under all sections specified in paragraph 3 other than section 267.	The value of the property stolen, removed, obtained or handled. The liability evaded or the services or advantage obtained.	What the property would probably have cost to buy in the open market at the time of the offence, the value of the liability, service or advantage in the open market at that time.

For the purposes of deciding whether in an offence under paragraph 4 there is a right of election, the value involved of the offence aided, abetted, etc., shall be calculated in accordance with the provisions above.

Second Schedule

[Section 240.]

Forms under the Criminal Procedure Code

FORM I

[Section 52 of the Criminal Procedure Code (Chapter 172).]

Summons to Enter into Bond to Keep the Peace or be of Good Behaviour

In the ..... Magistrate's Court

To ..... of .....

Whereas it has been made to appear to me by credible information that you are likely to commit a breach of the peace, or disturb that public tranquillity (or injure C.D.), you are hereby required to attend in person before me, the undersigned magistrate of this court on the ..... day of ....., 20....., at ..... a.m./p.m. in the ..... noon to show cause why you should not be required to enter into a bond to keep the peace or be of good behaviour.

Given under my hand and the stamp of the court this ..... day of ....., 20.....

.....

[Stamp] *Magistrate*

Copy of order to accompany summons or warrant (section 53 of the Criminal Procedure Code)

That ..... of ..... has threatened to and is likely to injure .....;

(*a*) The substance of the information received.

(*b*) The amount of the bond to be executed.

.....

(*c*) The term for which it is to be in force.

(*d*) The number, character and class of sureties if any, required.

..... sureties, each in .....

.....

[Stamp] *Magistrate*

FORM II

[Section 61 of the Criminal Procedure Code (Chapter 172).]

Bond to Keep the Peace or to be of Good Behaviour

Whereas I, ... have been called upon to enter into a bond in the amount of $ ..... to keep the peace (or to be of good behaviour towards .....) for the period of ..... from the execution of these presents.

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to Her Majesty the Queen the said sum.

This ..... day of ..... , 20.....

.....

Signature

(Where sureties are required, add)

We hereby bind ourselves jointly and severally in the ..... to answer that the above named will keep the peace towards ..... during the said term.

First surety	Second surety
Name	.....
Address	.....
Occupation	.....

Entered into before me this ..... day of ..... , 20..... , at .....

.....

[Stamp] *Magistrate*

FORM III

[Section 63 of the Criminal Procedure Code (Chapter 172).]

Warrant of Commitment on Failure to Find Security to Keep the Peace or be of Good Behaviour

To .....

Whereas ..... of ..... appeared before me on the ..... day of ..... , 20..... , in obedience to a summons calling upon him to show cause why he should not enter into bond for $ ..... to keep the peace (or to be of good behaviour towards .....).

And whereas an order was then made requiring the said ..... to enter into such a bond with (or without) sureties for a period of ..... and he has failed to comply with the said order:

This is to empower and require you the ..... to receive the ..... together with this warrant and him safely keep in custody for the said period of ..... and unless and until he tenders the said security, in which event you shall forthwith make report of the matter to this court; and return this, our warrant, with an endorsement certifying the manner of its execution.

Given under my hand and the stamp of the court this ..... day of ..... 20.....

.....

[Stamp] *Magistrate*

FORM IV

[Section 71 of the Criminal Procedure Code (Chapter 172).]

Summons to an Accused Person

To ..... of .....

Whereas Your presence is necessary to answer to a charge of ..... you are required to appear in person (or by counsel), before the magistrate's court at ..... in the ..... noon. Herein fail not.

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

.....

[Stamp] *Judge/Magistrate/Registrar*

FORM V

[Section 72 of the Criminal Procedure Code (Chapter 172).]

Warrant of Arrest

To all Police Officers

Whereas ..... of ..... is charged with the offence of ..... you are hereby directed to arrest the said ..... and to Produce him before the magistrate's court at ..... in execution of this your warrant and herein fail not.

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

.....

[Stamp] *Judge/Magistrate/Registrar*

[Section 73 of the Criminal Procedure Code (Chapter 172).]

This warrant may be endorsed as follows:

If the said ..... shall give bail himself in the sum of $ ..... with one sufficient surety in the sum of $ ..... (or two sufficient sureties each in the sum of $ .....), to attend before the magistrate's court at ..... on the ..... day of , 20..... and to continue so to attend until otherwise directed, he shall be released.

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

.....

Judge/Magistrate/Registrar

FORM VI

[Section 73 of the Criminal Procedure Code (Chapter 172).]

Bail Bond after Arrest taken by a Court or by a Police Officer

I, ..., of ..... being charged with the offence of ..... and being required to appear before the magistrate's court at ..... on the ..... day of ....., 20 ....., next do hereby bind myself to attend the said court on the date named and to continue so to attend until the trial of my case shall be concluded, and should I fail to do so, I bind myself to forfeit to Her Majesty the Queen the sum of $ .....

.....

Signature and Address

Sureties. We jointly and severally declare ourselves and each of us sureties for the appearance

of the said ..... as set out above, and in case of him making default therein we hereby bind ourselves severally to forfeit to Her Majesty the Queen the sum of $.....

	First surety	Second surety
Name	.....	.....
Address	.....	.....
Occupation	.....	.....

Entered into before me this ..... day of ....., 20 .....

.....

[Stamp] *Magistrate*

FORM VII

[Section 41 of the Criminal Procedure Code (Chapter 172).]

Search Warrant

To .....

Whereas it has been made to appear to me that the following article (namely, etc.) .... by/in respect of/which is necessary to the conduct of an investigation into the offence of .....(or which is intended for use without lawful excuse to destroy or damage property) is in ..... (here describe the place in which the article is deemed to be):

.....

This is to authorise and require you to enter upon and search the aforesaid place, and if found to seize the said article and carry it before a court to be dealt with according to law.

You are further authorised to execute this search warrant at any hour.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Judge/Magistrate/Registrar*

FORM VIII

[Section 49 of the Criminal Procedure Code (Chapter 172).]

Summons re Forfeited Recognisance

To .....

Whereas it has been proved to the satisfaction of the court that the bond entered into by you in the amount of $ ..... on the ..... day of ..... , 20 ....., has been forefeited by reason of .....

You are hereby required to pay the said amount of $ ..... or to appear before this court on the ..... day of ..... , 20....., next at ..... a.m./p.m. to show cause why the said sum of $ ..... should not be paid.

Given under my hand and the stamp of the court this ..... day of ....., 20 .....

.....

[Stamp] *Registrar/Magistrate*

FORM IX

[Section 49 of the Criminal Procedure Code (Chapter 172).]

Warrant of Distress to Enforce a Bond

To .....

Whereas ..... has failed to appear pursuant to his bond in that behalf and has by such default forfeited to Her Majesty the Queen the sum of $..... secured by the said bond:

This is to authorise and require you to attach any movable or immovable property of the said

.....

..... that you may find within Saint Vincent and the Grenadines by seizure and detention, and, if the said amount be not paid within ..... days hereof to sell the property so attached or so much thereof as may be sufficient to realise the amount aforesaid by public auction, and forthwith to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the stamp of the court this ..... day of ....., 20 .....

.....

[Stamp] *Magistrate*

FORM X

[Section 93 of the Criminal Procedure Code (Chapter 172).]

Summons to a Witness

To .....

Whereas complaint has been made before me that ..... of ..... has committed the offence of .....

You are hereby summoned to appear before the High Court/magistrate's court at .... a.m./p.m. ..... to testify what you know concerning the matter of the said complaint and so on from day to day until the trial be concluded.

Given under my hand and the stamp of the court this ..... day of ....., 20 .....

.....

[Stamp] *Magistrate*

FORM XI

[Section 142 of the Criminal Procedure Code (Chapter 172).]

Deposition

Deposition of .....

of ..... taken on the ..... day of ....., 20....., before me the undersigned magistrate in the presence of the accused charged as set forth in the annexed information.

The said deponent, makes oath/affirmation and says as follows in the ..... language:

My name is .....

.....

.....

.....

.....

.....

.....

.....

Read over to the deponent and signed by him/her.

....

Signature of Deponent *Signature of Magistrate*

I certify that the above deposition was taken in the presence of the accused and that the accused or his advocate had full opportunity to cross-examine the deponent.

.....

[Stamp] *Signature of Magistrate*

FORM XII

[Section 146 of the Criminal Procedure Code (Chapter 172).]

Caution to the Accused before Committal for Trial, and Evidence, if any

The charge against you is (*a*) .....

I inform you that this is not your trial. You will be tried later in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to give evidence on oath and to call any witnesses on your behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now give evidence on oath, and you may call witnesses on your own behalf. If you give evidence on oath, you will be liable to cross-examination. Anything you may say will be taken down and may be used in evidence 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 held out to induce you to make any admission or confession of your guilt. But that whatever you shall now say may be given in evidence at your trial, notwithstanding such promise or threat.

The accused in reply states or electing to be sworn, is duly sworn and states:

.....

.....

.....

.....

.....

I read over the above to the accused who agrees that it is correct and that he has nothing to add to it and I certify that the above evidence was taken in my presence and hearing and contains accurately the whole evidence given by the accused.

.....

Signature or Mark of Accused

.....

Signature of Magistrate and Date

I ask the accused whether he desires to call any witnesses.

He replies: (*b*)

.....

(*a*) The magistrate reads and explains the charge in simple language.

(*b*) The depositions of the accused's witnesses are not to be taken on this sheet, only his answers to the question.

FORM XIII

[Section 95 of the Criminal Procedure Code (Chapter 172).]

Warrant to Compel Attendance of a Witness

To all Police Officers

Whereas complaint has been made that ..... of ..... has committed the offence of ..... and it has been made to appear that ..... of ..... can give evidence concerning the said offence:

And whereas the court is satisfied on oath that the said ..... will not of his/her own accord attend as witness on the hearing of the said complaint.

This is to authorise you to arrest the said ..... and bring him/her before the magistrate's court at ..... on the ..... day of ..... , 20..... , next to be examined touching the offence complained of.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Magistrate*

FORM XIV

[Sections 145 and 187 of the Criminal Procedure Code (Chapter 172).]

Commitment on Adjournment or Remand

To .....

Whereas ..... stands charged with the offence of ..... these presents are to command you to lodge the said ..... in the prison at ..... and him safely there to keep until the ..... day of ....., 20....., next when you shall bring the said ..... before the court at ..... a.m./p.m.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

[Stamp] .....

Registrar/Magistrate

Further remands

Date	Remanded to	Signature of Magistrate
.....	.....	.....
.....	.....	.....

FORM XV

[Section 150 of the Criminal Procedure Code (Chapter 172).]

Committal for Trial

To .....

These are to command you to lodge ..... who is accused of the offence of ..... in the prison at ..... and keep him safely there to until his trial on ..... and when you shall bring him before the High Court.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Magistrate*

FORM XVI

[Section 151 of the Criminal Procedure Code (Chapter 172).]

Bond to Give Evidence

I, ... , of ..... do hereby bind myself to attend the High Court to give evidence in the matter of a charge of ..... against one ..... and, in case of making default therein, I bind myself to forfeit to Her Majesty the Queen the sum of $.....

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

.....

Complainant or Witness

.....

[Stamp] *Magistrate*

FORM XVII

[Section 154 of the Criminal Procedure Code (Chapter 172).]

Bond to give Evidence Conditionally

I, ..., of ..... do hereby bind myself to attend the High Court, conditionally upon notice being given to me, to give evidence in the matter of a charge of ..... against one ..... and in case of making default herein, I bind myself to forfeit to Her Majesty the Queen the sum of $.....

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

.....

Complainant or Witness

.....

[Stamp] *Magistrate*

FORM XVIII

[Section 207.]

Warrant of Commitment of Person Sentenced to Death

To .....

Whereas ..... of ..... was on this day convicted before this court of the offence of ..... contrary to section ..... of the Criminal Code and was sentenced to suffer death:

That is to authorise and require you, the said ..... to receive the said ..... into your custody together with this warrant and to keep him safely until you shall receive the further order of the Governor-General.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

Judge

FORM XIX

[Section 113 of the Criminal Procedure Code (Chapter 172).]

Warrant of Commitment

To .....

Whereas ..... of ..... was on this day convicted before this court of the offence ..... and was sentenced to .....

You are hereby required to receive the said ..... into your custody together with this warrant and to carry the aforesaid sentence into execution according to law.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Magistrate*

FORM XX

[Section 26.]

Warrant to Levy a Fine by Distress and Sale

To .....

Whereas ..... was on the ..... day of ....., 20....., convicted before me of the offence of ..... and sentenced to pay a fine of $ .....

And whereas the said ..... has not paid the same or any part thereof:

This is to authorise and require you to make distress by seizure of any movable or immovable property belonging to the said ..... which may be found within Saint Vincent and the Grenadines ..... and, if within ..... days of such distress the said sum be not paid, to sell by public auction the property distrained, or so much thereof as shall be sufficient to satisfy the said fine and thereupon return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Registrar/Magistrate*

FORM XXI

[Section 94.]

Warrant to Bring up a Witness who has Refused to Attend in Pursuance of a Summons

To .....

To all Police Officers

Whereas by a statement on oath of ..... it appears to me ..... magistrate, that there is reason to believe that ..... is a material witness to prove a ..... lately committed:

And whereas the said ..... having been duly summoned to give evidence touching the same, has neglected to appear in pursuance of the said summons:

These are therefore, in Her Majesty's Name, to command you to bring before me, the said magistrate, ... at ..... at ..... a.m./p.m. on the ..... day of ....., 20....., the body of the said ..... so that he may then and there give evidence touching the .....

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Magistrate*

FORM XXIII

[Section 26 of the Criminal Code (Cap 124).]

Warrant of Commitment for Non Payment of Fine, Costs or Compensation

To .....

and .....

Whereas on the ..... day of ....., 20 ....., ... was duly convicted before the High Court/magistrate, of having committed the offence of ..... and was sentenced to a fine of $ ..... and further to pay the sum of $ ..... for costs, or in default thereof to be imprisoned for a period of .....

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

These are therefore, in Her Majesty's Name, to command you the said ..... to cause the said ..... to be conveyed to the prison there to deliver him to, and you, the said ..... are hereby required to receive ..... in prison and keep him there for the said period, unless the said sum be sooner paid or until delivered from your custody by due course of law and for so doing this shall be your sufficient warrant.

Given under my hand and the stamp of the court this ..... day of ..... , 20.....

.....

[Stamp] *Registrar/Magistrate*

Third Schedule

[Section 167.]

Rules for Framing Indictment and Charges

1. (1) Any indictment may be on parchment or durable paper and may be either written or printed, or partly written and partly printed.

(2) Each sheet on which an indictment is set out shall be not more than seventeen and not less than thirteen inches in length, and not more than fourteen and not less than eight inches in width, and if more than one sheet is required the sheets shall be fastened together in book form.

(3) A proper margin not less than two inches in width shall be left on the left hand side of each sheet.

(4) Figures and abbreviations may be used in an indictment for expressing anything which is commonly expressed thereby.

(5) There shall be endorsed on the indictment the name of every witness intended to be examined by the prosecution.

(6) An indictment shall not be open to objection by reason only of any failure to comply with this rule.

2. The commencement of an indictment shall be in the following form:

SAINT VINCENT AND THE GRENADINES IN THE
HIGH COURT OF JUSTICE (CRIMINAL)

THE QUEEN
v
A.B. INDICTMENT

A. B. is charged as follows:

.....

Dated the ..... day of ....., 20.....

.....
Director of Public Prosecutions

3. (1) A description of the offence charged in an indictment or charge or, where more than one offence is charged, of each offence so charged shall be set out in a separate paragraph called a count.

(2) A count shall commence with a statement of the offence charged, called a statement of offence.

(3) The statement of an offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the elements of the offence, and if the offence charged is one created by any written law, shall contain a reference to the section of the written law creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary.

(5) Where a charge or indictment contains more than one count, the counts shall be numbered consecutively.

4. (1) Where a written law constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions or other matters stated in the alternative in the written law may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from or qualification to the operation of the written law creating the offence.

5. (1) The description of property in a count shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as "Inhabitants", "Trustees", "Commissioners", or "Club" or other such name, it shall be sufficient to use the collective name without naming any individual.

6. The description or destination in an indictment of the accused or of any other person to whom reference is made there, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown".

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

8. In a count in respect of an offence for engraving, or making the whole or any part of any instrument, matter or anything whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever, shall have been engraved or made, or for having the part of any instrument, matter or thing whatsoever, shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument, matter or thing.

9. In a count in which it shall be necessary to make any averment as to any money or any currency note, it shall be sufficient to describe such money or currency note simply as money, without specifying any particular coin or bank note; and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin, or any bank note, although the particular species of coin of which such amount was composed or the particular nature of the bank note shall not be proved; and in cases of obtaining money or pecuniary advantages by deception, be proof that the offender obtained any piece of coin, or any bank note, or any portion of the value thereof although such piece of coin or bank note, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person and such part shall have been returned accordingly.

10. Subject to any other provisions of these Rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or indictment in ordinary language in such manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

11. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person where the written law creating the offence does not make any intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

12. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence:

Provided that in reading such indictment to the jury regard shall be had to the provisions of section 183.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
