



MONTSERRAT

## CHAPTER 4.01

# CRIMINAL PROCEDURE CODE

**Revised Edition**  
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **CRIMINAL PROCEDURE CODE**

Act 21 of 1982 .. in force 1 June 1990 (S.R.O. 4/1990)

Page  
3





## CHAPTER 4.01

# CRIMINAL PROCEDURE CODE

**Revised Edition**  
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **CRIMINAL PROCEDURE CODE**

Act 21 of 1982 .. in force 1 June 1990 (S.R.O. 4/1990)

Page  
3



**CHAPTER 4.01**

**CRIMINAL PROCEDURE CODE**

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

**SECTION**

1. Short title
2. Interpretation
3. Inquiry into and trial of offences

**PART II**

**POWERS OF COURTS**

4. Power of Courts to try offences
5. Offences under certain laws
6. Sentences which Courts may impose
7. Sentences in cases of conviction of several offences at one trial

**PART III**

**GENERAL PROVISIONS RELATING TO  
CRIMINAL INVESTIGATIONS AND PROCEEDINGS**

8. Authority of High Court and Magistrate's Court and general validity of judicial process
9. Court to be open
10. Power of Attorney General to enter *nolle prosequi*
11. Authority of Attorney General in respect of conduct of prosecutions
12. Conduct of private prosecutions
13. Complaint and Charge
14. Issue of Summons and Warrant
15. Form, validity and execution of warrant of arrest
16. Court may direct security to be taken
17. Service of Summons
18. Service on Company

19. Proof of Service of Summons
20. When personal attendance of accused may be dispensed with
21. If summons disobeyed, warrant may issue
22. Power to take bond for appearance
23. Court may order prisoner to be brought before it
24. Search Warrants
25. Execution of Search Warrants
26. Search Warrants – further provisions
27. Bail in certain cases
28. Discharge from custody when bail is granted
29. Persons convicted or acquitted not to be tried again for same offence
30. A person may be tried again for separate offence
31. Consequences supervening or not known at time of former trial
32. Where original Court was not competent to try subsequent charge
33. Proof of previous conviction
34. Summons for Witness
35. Warrant for witness who disobeys summons
36. Warrant for witness in the first instance
37. Mode of dealing with witness arrested under warrant
38. Power of Court to order prisoner to be brought up for examination
39. Penalty for non-attendance of witness
40. Power to summon material witness or examine person present
41. Evidence to be given on oath
42. Refractory Witness
43. Procedure where person charged is the only witness called
44. Court to inquire into suspected incapacity of accused
45. Procedure when accused found insane during proceedings
46. Defence of insanity at preliminary investigation
47. Resumption of Proceedings if accused ceases to be incapable
48. *Prima facie* evidence of capacity of accused may be given by certificate
49. Provisions relating to the taking of evidence
50. Recording of Evidence
51. Mode of delivering Judgment
52. Contents of Judgment
53. Accused person entitled to copy of judgment on application
54. Property found on accused person
55. Disposal of property after completion of trial
56. Alternative convictions
57. Accused persons entitled to be present at trial and may be represented by legal practitioner

**PART IV**

**PROCEDURE IN TRIALS BEFORE THE MAGISTRATE'S COURT**

58. Non-appearance of complainant at trial
59. Non-appearance of defendant at the trial
60. When neither party appears
61. Appearance of both parties
62. Accused person may elect for trial on indictment in certain cases
63. If accused pleads guilty
64. Pleas in other cases
65. Procedure after plea of not guilty
66. Acquittal of accused person if no case to answer
67. The Defence
68. Evidence in reply
69. Opening and closing of cases for prosecution and defence
70. Amendment of charge and variance between charge and evidence
71. The decision of the Court; costs
72. Drawing up conviction
73. Acquittal of accused person to bar further proceedings
74. Limitation of time for proceedings for summary offences
75. Power of Court in cases triable both summarily and on indictment
76. Special procedure in minor cases where the charge is admitted
77. Where Court awards imprisonment without option of fine, prisoner shall be committed to prison
78. Powers of Magistrate when imposing a fine or other monetary penalty
79. Withdrawal of complaint

**PART V**

**PROCEDURE FOR COMMITTAL OF ACCUSED  
FOR TRIAL BEFORE THE HIGH COURT**

80. Power to commit for trial
81. Court to hold preliminary inquiry
82. Magistrate to read charge to accused and explain purpose of the proceedings
83. Taking of depositions
84. Variance between evidence and charge
85. Remand
86. Provisions as to taking statements or evidence of accused person

87. Procedure if offence admitted by accused
88. Evidence and address in defence
89. Discharge of accused persons
90. Summary adjudication in certain cases
91. Committal for trial
92. Complainant
93. Refusal to be bound over
94. Accused person entitled to copy of depositions
95. Binding over of witnesses conditionally
96. Deposition of witness who is ill or about to leave Montserrat
97. Notice to be given
98. Magistrate to deal with deposition like any other deposition
99. Deposition to be admissible in evidence
100. Accused to have the same privileges as prosecutor under section 96
101. Transmission of records to High Court and Attorney General
102. Power for the Attorney General to refer case back to Magistrate for further preliminary inquiry
103. Mode of trial upon committal to the High Court and preferment of indictment
104. Notice of trial
105. Service of copy of indictment and notice of trial
106. Postponement of trial

## PART VI

### COMMITTAL OF ACCUSED FOR SENTENCE

107. Procedure where accused admits guilt at preliminary inquiry
108. Transmission of record of proceedings
109. Accused to be brought before Judge to be dealt with
110. Withdrawal by accused of consent to his committal for sentence
111. Powers of Court and Judge when dealing with committals for sentence
112. Notice by person committed for trial of intention to plead guilty

## PART VII

### PROCEDURE IN TRIALS BEFORE THE HIGH COURT

113. Practice of High Court in the exercise of its criminal jurisdiction
114. Bench warrant where accused does not appear
115. Bringing up prisoner for trial



116. Arraignment of accused
117. Objection to indictment on grounds of insufficiency of particulars
118. Amendment of Indictment, separate trial and postponement of trial
119. Quashing of Indictment
120. Charge of previous conviction
121. Pleading to the indictment
122. Refusal or incapacity to plead
123. Proceedings when plea made
124. Special pleas allowed to be pleaded
125. General effect of pleas of *autrefois acquit* and *convict*
126. Effects where previous offence charged was without aggravation
127. Use of depositions, etc., on former trial, or trial of special plea
128. Power to postpone or adjourn trial
129. Procedure relating to jurors
130. Giving prisoner in charge of jury
131. Case for the prosecution
132. Additional evidence for the prosecution
133. Cross-examination of prosecution witnesses
134. Deposition may be read in certain cases
135. Statement of accused
136. Close of case for prosecution
137. Case for the defence
138. Additional witness for the defence
139. Evidence in reply *ex improviso*
140. Where accused adduces no evidence
141. Right to reply
142. Court may require witness to be called
143. Recalling a witness
144. Summing up by the Judge
145. Consideration of verdict by Jury
146. Recording of verdict
147. Verdict of not guilty
148. Calling upon the accused
149. Motion in arrest of Judgment
150. Evidence for arriving at proper sentence
151. Sentence
152. Recording of Judgement
153. Objections cured by verdict
154. Time for raising objections
155. Minute of proceedings in trial before High Court

## PART VIII

## PROCEDURE RELATING TO PERSONS FOUND INSANE

156. Special verdict where accused found guilty, but insane at date of offence charged
157. Provision for custody of accused person found insane

## PART IX

## PROVISIONS RELATING TO THE FRAMING OF INDICTMENTS

158. Offence to be specific in indictment
159. Joinder of counts in indictment
160. Joinder of two or more accused in one indictment
161. Rules for the framing of indictments
162. Application of Part IX and Rules to charges before Magistrate's Court

## PART X

## APPEALS FROM MAGISTRATE'S COURT

163. Appeals from decisions of Magistrate's Court
164. Magistrate to inform accused person of right to appeal
165. Limitations on right of appeal
166. Appeal to operate as a stay
167. Recognizance for security to be taken
168. Transmission of appeal papers
169. Admission of appellant to bail
170. Case stated
171. Remedy if case stated refused
172. Duty of Magistrate's Court as to case stated
173. Appellant entitled to copies of evidence
174. Court to set appeal down for argument
175. Appeal not a re-hearing unless the Court so directs
176. Procedure on hearing of appeal on motion
177. Court on hearing appeal on motion to decide on facts as well as law
178. On appeal by special case Court confined to facts and evidence stated therein
179. Powers of Court on hearing appeals
180. Costs

181. Where appeal is abandoned Court may give respondent his costs
182. No appeal on point of form or matter of variance
183. Court may decide on merits notwithstanding any defect in form
184. Defect in order or warrant of commitment not to render void
185. Where conviction confirmed, warrant may issue as though no appeal had been made

## PART XI

### MISCELLANEOUS

186. Powers of High Court in respect of *habeas corpus*, etc
  187. Code not to affect certain powers
  188. General power to require recognizance to keep the peace
  189. Seizure of property obtained by offence
  190. Copies of proceedings
  191. Criminal informations abolished
  192. Rules
- SCHEDULE I: Form of Search Warrant  
SCHEDULE II: Rules for Framing Indictments



**CHAPTER 4.01**

**CRIMINAL PROCEDURE CODE**

*(Act 21 of 1982)*

AN ACT TO MAKE PROVISION FOR THE PROCEDURE TO BE FOLLOWED IN CRIMINAL CASES AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH.

**Commencement**

*[1 June 1990]*

**PART I**

**PRELIMINARY**

**Short title**

1. This Act (hereinafter referred to as this Code) may be cited as the Criminal Procedure Code.

**Interpretation**

2. In this Code, unless the context otherwise requires—

“**Commissioner of Police**” means the person appointed as such under the provisions of the Police Act;

“**committed for trial**” means committed for trial before the High Court;

“**Complaint**” means an allegation that some person has committed an offence;

“**counsel**” means any legal practitioner instructed to represent any party in proceedings before a Court;

“**Court**” means the High Court or the Magistrate’s Court as the context may require;

“**Court of Appeal**” means the Court of Appeal established by the West Indies Associated States Supreme Court Order, 1967;

“**High Court**” means the High Court established by the West Indies Associated States Supreme Court Order, 1967;

“**Judge**” means a judge of the High Court;

“**juvenile**” and “**young person**” have the meanings respectively given to those expressions in the Juvenile Act;

**“legal practitioner”** means any person authorized to practise as such before the High Court under the provisions of any law for the time being in force;

**“Magistrate”** means any person for the time being appointed as such to exercise the powers and jurisdiction conferred by the Magistrate’s Court Act;

**“Magistrate’s Court”** means the Court exercising jurisdiction under the Magistrate’s Court Act;

**“preliminary inquiry”** means an inquiry into a criminal charge conducted by the 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, the Commissioner of Police or any department of the 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;

**“Registrar”** means the Chief Registrar of the Supreme Court acting in his or her capacity as Registrar of the Court of Appeal or of the High Court (as the case may be) and includes a Deputy Registrar or other officer for the time being discharging the duties of Registrar or Deputy Registrar.

### **Inquiry into and trial of offences**

3. Subject to the express provisions of any other law for the time being in force, all offences shall be inquired into, tried and otherwise dealt with according to the provisions of this Code hereinafter contained.

## **PART II**

### **POWERS OF COURTS**

#### **Power of Courts to try offences**

4. 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 for the time being in force, may be tried by the Magistrate's Court.

**Offences under certain laws**

5. (1) Any offence under any law for the time being in force shall, when any Court is mentioned in that behalf in such law, be tried by such Court.

For the purposes of this subsection a provision in any law for an offence to be tried summarily shall be construed as a reference to the trial of such offence by the Magistrate's 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.

**Sentences which Courts may impose**

6. (1) The High Court may pass any sentence authorized by law to be inflicted in respect of the offence for which it is imposed.

(2) The Magistrate's Court may in a case in which such sentence is authorized by laws to be inflicted in respect of the offence for which it is imposed, pass sentences as follows—

- (a) any sentence permitted to be imposed in respect of an offence under any law which expressly provides that the offence shall be tried summarily;
- (b) in any case not falling within the terms of paragraph (a), imprisonment for a term not exceeding six months or a fine not exceeding \$1,000.

(3) Any Court may pass any lawful sentence combining any of those sentences which it is authorized by law to pass.

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

**Sentences in cases of conviction of several offences at one trial**

7. (1) When a person is convicted at one trial of two or more distinct 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 imprisonment to commence the one after the expiration of the other, unless the Court directs that such sentences shall run concurrently.

(2) Where a sentence of imprisonment is passed upon a person who is already serving a sentence of imprisonment in respect of another conviction, the further sentence shall commence at the expiration of the earlier sentence unless the Court directs that the sentences shall run concurrently.

(3) In the case of consecutive sentences it shall not be necessary for the Magistrate's Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is permitted to impose on conviction of a single offence, to send the offender for trial before the High Court:

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the Magistrate's Court is competent to impose in the exercise of its ordinary jurisdiction.

### PART III

#### GENERAL PROVISIONS RELATING TO CRIMINAL INVESTIGATIONS AND PROCEEDINGS

#### **Authority of High Court and Magistrate's Court and general validity of judicial process**

8. (1) The High Court or the Magistrate's Court shall have authority to cause to be brought before it any person who is within Montserrat and who is charged with an offence—

- (a) committed within Montserrat; or
- (b) which according to law may be inquired into or tried as if it had been committed within Montserrat, and to deal with the accused person according to law and subject to the jurisdiction of the Court concerned.

(2) Any summons, warrant of arrest, search warrant or other judicial process issued in due form under the provisions of any law by any Court, Judge, Magistrate or Justice of the Peace shall be of full force and effect in all parts of Montserrat without any requirement for further authentication, backing or endorsement by any person before execution, and shall remain valid notwithstanding that the person issuing the same has died or ceased to hold office.

(3) In addition to the powers conferred upon the judge by this Code or any other law, a judge shall be deemed to have all the powers conferred by this Code or any other law upon a Magistrate or justice of the peace to issue any summons, warrant of arrest, search warrant or other judicial process.



### **Court to be open**

**9.** The place in which any Court sits for the purpose of trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the judge or the presiding Magistrate, as the case may be, if he thinks fit at any stage of the trial of any particular case, may order that the public generally or any particular person shall not have access to or remain in the room or building used by the Court.

### **Power of Attorney General to enter *nolle prosequi***

**10. (1)** In any proceedings against any person, and at any stage thereof before the verdict or judgment, as the case may be, the Attorney General 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 recognizances shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

**(2)** If the accused person 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 person is detained and also, if the accused person has been committed for trial, to the Magistrate's Court 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.

### **Authority of Attorney General in respect of conduct of prosecutions**

**11. (1)** The Attorney General and any legal practitioner instructed for the purpose by the Attorney General 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 Attorney General from time to time, any police officer may conduct criminal proceedings in the 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 Attorney General may by writing authorize any public officer to conduct prosecutions in the Magistrate's Court in respect of

particular matters or categories of offences or in relation to the activities or functions of a particular department of the Government.

(4) Any *nolle prosequi* or authority purporting to be signed by the Attorney General and issued under the provisions of section 10 or this section, as the case may be, shall be admitted and deemed to be *prima facie* valid for the purpose for which it was issued without proof of the signature.

(5) Notwithstanding any power conferred upon any person under the provisions of this section to institute or conduct any criminal proceedings, any such person shall at all times in respect thereof be subject to the express directions of the Attorney General who may in any case himself institute or conduct any criminal proceedings or may take over and continue or direct any legal practitioner or, in case of proceedings in the Magistrate's Court, any public officer, to take over and continue in accordance with his instructions any criminal proceedings instituted or undertaken by any person, including a private prosecutor.

### **Conduct of private prosecutions**

12. 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.

### **Complaint and charge**

13. (1) Criminal proceedings may be instituted either by the making of a complaint or by the bringing before a Magistrate of a person who has been arrested without 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 the preceding subsection, 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.

### **Issue of Summons and Warrant**

14. (1) Upon receiving a complaint and the charge having been duly signed in accordance with the provisions of section 13, a Magistrate may in his discretion issue either a summons or a warrant of arrest to compel the attendance of the accused person before the Magistrate's Court:

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

### **Form, validity and execution of warrant of arrest**

15. (1) Every warrant of arrest may be issued at any time on any day, and shall be under the hand and seal of the Magistrate or justice of the peace 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 Montserrat.

(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 the 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 made returnable at any particular time but shall remain in force until executed or cancelled by the Magistrate or justice of the peace issuing the same or by order of a Court having jurisdiction in the matter.

(3) The Magistrate or justice of the peace 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.

### **Court may direct security to be taken**

16. (1) When a warrant is issued for the arrest of any person for any offence other than a charge in respect of an offence of treason, felony, murder, or genocide, it may, in the discretion of the Magistrate or justice of the peace issuing the same, be directed by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time 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;
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the time 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.

### **Service of Summons**

17. Subject to the provisions of section 18 every summons shall be served upon the person to whom it is directed by a police officer by delivering it to him personally, or, if he cannot conveniently be found, by leaving it with some adult inmate of his last or most usual place of abode, or with his employer.

### **Service on Company**

18. Service of a summons on a body corporate may be effected by serving it on the Secretary, local Manager or other principal officer of the corporation, or by registered letter addressed to the body corporate at its registered address in Montserrat. In the latter case service shall be deemed to have been effected when the letter would arrive in the ordinary course of post.

### **Proof of service of summons**

19. (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 a certificate of registration shall be accepted by the Court as *prima facie* evidence of service.

**When personal attendance of accused may be dispensed with**

20. (1) The personal attendance of an accused person before the 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 person who desires to plead guilty and be convicted of any such offence in his absence may within seven days of the service upon him of the summons 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 person 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 person 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 presiding Magistrate who shall thereupon formally convict the accused person 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 person 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 Governor, after consultation with the Chief Justice, may by order prescribe the offences to which the provisions of this section shall apply.

**If summons disobeyed, warrant may issue**

21. 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 19, that the summons was duly served within 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 apprehend

the person so summoned as aforesaid and to bring him before the Court to be dealt with according to law:

Provided that no warrant may be issued in a case in which the summons is one to which the provisions of section 20 apply and in which a written plea of guilty has been entered and the penalty paid in accordance with the provisions of that section.

### **Power to take bond for appearance**

**22. (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, or make a deposit of money in lieu thereof, for his appearance in such Court on such date 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 this Code, to appear before a Court, or who has made a deposit of money in lieu of executing such bond, does not so appear, the Court may issue a warrant directing that such person be arrested and brought before the Court.

### **Court may order prisoner to be brought before it**

**23. (1)** Where any person for whose appearance or arrest a Court is empowered to issue a summons or warrant is confirmed 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 directed, 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.

### **Search warrants**

**24. (1)** Where a Court or Magistrate or Justice of the Peace is satisfied by evidence on oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any offence has been committed is in any place or places, such Court, Magistrate or Justice may grant a warrant directed to any police officer or other person to enter and search any such place or places in any part of Montserrat, by force if necessary, at any time by day or night. If such property or any part thereof be found, such police officer or person shall seize it and bring the same and the person or persons in whose possession such place or places then may be, or any person in any such place reasonably suspected of being privy to such property being therein, before the Magistrate's Court to be dealt with according to law.

(2) A warrant issued under subsection (1) is hereafter in this Code referred to as a search warrant.

(3) For the purposes of this section “**place**” shall include any building, ship, vehicle, aircraft, box, receptacle or locality whatsoever in any part of Montserrat as may be specified in any search warrant.

### **Execution of search warrants**

**25. (1)** Whenever any building or other place liable to search in accordance with the terms of a search warrant, issued under the provisions of section 24, is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing such warrant and on production to him of the warrant, allow such police officer free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

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

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

(4) When anything is seized and brought before a Court in pursuance of powers conferred by any search warrant, it may be retained until the conclusion of the case of investigation in respect of which its seizure was authorized, 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 if no person is committed for trial, the Court shall direct such thing to be restored to the person from whom it was taken, unless the Court is authorized and sees fit, or is required by law, to dispose of it otherwise.

### **Search Warrants – further provisions**

**26. (1)** Every search warrant shall be in the form set out in Schedule I 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.

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

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

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

(5) A search warrant shall be valid and may be executed in any part of Montserrat, unless otherwise stated in the warrant, and on any day including a Sunday.

### **Bail in certain cases**

27. (1) When any person, other than a person accused of treason, felony, murder or genocide appears or is brought before a Court, or is committed for trial by any such 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 a surety or 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.

(3) Notwithstanding any other provisions of this section, the High Court may in any case and at any stage thereof direct that any person be admitted to bail or that bail required by the Magistrate's Court be reduced.

### **Discharge from custody when bail is granted**

28. (1) As soon as the recognizance, with or without sureties as the case may be, 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 on receipt of the order shall release him.

(2) Nothing in this section 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 recognizance was entered into.

### **Persons convicted or acquitted not to be tried again for same offence**

29. 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.

### **A person may be tried again for separate offence**

30. A person acquitted or convicted of any offence may afterwards be tried for any other offence with which he might have been charged on the same facts and upon which he could not have been convicted at the previous trial.



### **Consequences supervening or not known at time of former trial**

**31.** 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.

### **Where original Court was not competent to try subsequent charge**

**32.** Subject to the provisions of any other law for the time being in force, 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.

### **Proof of previous conviction**

**33. (1)** In any inquiry or other proceeding under this Code in which it becomes necessary to prove the previous conviction of any accused person, a copy of the record of the conviction for the offence on summary trial, or a certificate containing the substance and 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 Montserrat 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 person.

### **Summons for witness**

**34. (1)** If it is made to appear on the statement of the complainant or the defendant or otherwise, that material evidence can be given by or is in the possession of any person, a Court having cognizance 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 and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) The Governor in Council may make regulations prescribing scales of fees and expenses payable to witnesses summoned to give evidence in criminal cases.

#### **Warrant for witness who disobeys summons**

35. If without sufficient excuse, a witness does not appear in obedience to a summons issued under the provisions of section 34, the Court, on proof of the proper service of the summons within a reasonable time beforehand, may issue a warrant to bring him before the Court at such time and place as shall be therein specified.

#### **Warrant for witness in first instance**

36. If the Court is satisfied by evidence of an 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.

#### **Mode of dealing with witness arrested under warrant**

37. When any witness is arrested under a warrant the Court may on his furnishing security, by recognizance or deposit of cash 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.

#### **Power of Court to order prisoner to be brought up for examination**

38. 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 23 shall be followed.

#### **Penalty for non-attendance of witness**

39. (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 \$500.

(2) Such fine if not previously paid may be levied by attachment and sale of any movable 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 of goods, the witness may, by order of the Court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

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

**Power to summon material witness or examine person present**

**40.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, 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 it 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 shall 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 prejudiced by the calling of any such person as a witness.

**Evidence to be given on oath**

**41.** Every witness in any criminal cause or matter shall be examined upon oath or affirmation and the Court before which any witness shall appear shall have full power and authority to administer the appropriate oath or affirmation in accordance with the provisions of the Oaths Act:

Provided that 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 immature age or want of religious belief ought not, in the opinion of the Court, to be admitted to give evidence on oath and the fact of the evidence having been so taken shall be recorded in the proceedings.

**Refractory witness**

**42. (1)** Whenever 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 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 again from time to time until such person consents to do what is so required of him.

(3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or prevent the Court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

#### **Procedure where person charged is the only witness called**

43. (1) Where the only witness of 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) In cases where the right of reply depends upon the question whether evidence has been called for the defence the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

#### **Court to inquire into suspected incapacity of accused**

44. Without prejudice to the provisions of sections 156 and 157 of this Code (relating to cases in which an accused person on trial on indictment may be found to be insane at the time of arraignment or to have been insane at the date of the offence with which he is charged), when in the course of any trial or preliminary inquiry the Court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the Court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

#### **Procedure when accused found insane during proceedings**

45. (1) If in a case referred to in the preceding section the Court finds that the accused person is of unsound mind and incapable of making his defence it shall postpone further proceedings in the case.

(2) If the case is one in which bail may be taken, the Court may release the accused person on sufficient surety 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 called upon, before the Court or any officer of the Court appointed in that behalf.

(3) If the case is one in which bail may not be taken or if sufficient surety cannot be given or the Court, for any sufficient reason, considers that bail ought not to be granted, the Court shall report the matter to the Governor who may order the accused person to be detained in any hospital or other place appointed by any law for reception or custody of persons of unsound mind; and the Governor may from time to time make such further order in the case for the detention, treatment or otherwise of the accused as

the circumstances may require. Pending the order of the Governor in any such case the Court shall direct that the accused person be remanded in custody.

(4) The powers conferred on the Governor by this section shall be exercised by him in his discretion.

#### **Defence of insanity at preliminary investigation**

46. When an accused person appears to be of sound mind at the time of a preliminary investigation, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was insane within the meaning of the law relating to capacity to commit a criminal offence, the Court shall proceed with the case and if the accused person ought, in the opinion of the Court, to be committed for trial before the High Court, the Court shall so commit him.

#### **Resumption of proceedings if accused ceases to be incapable**

47. Whenever any preliminary investigation or trial is postponed under the provisions of section 44 or 45 the Court may at any time resume the preliminary investigation or trial, unless the accused person is detained in pursuance of an order by the Governor given under the provisions of subsection (3) of section 45, and require the accused to appear or be brought before such Court, when if the Court finds him capable of making his defence, the preliminary investigation or trial shall proceed, but if the Court considers the accused person still to be incapable of making his defence, it shall act as if the accused were brought before it for the first time.

#### ***Prima facie* evidence of capacity of accused may be given by certificate**

48. If an accused person is confined in a hospital or other place appointed by law for the reception or custody of persons who are mentally ill, under any order made in exercise of any power conferred by this code, and the medical practitioner in charge of such hospital or place certifies that the accused person is capable of making his defence, the Governor may order that such accused person shall be taken before the Court having jurisdiction in the case to be dealt with according to law, and the certificate of such medical practitioner shall be receivable by the Court as *prima facie* evidence of the capacity of the accused person.

#### **Provisions relating to the taking of evidence**

49. (1) Except as may be otherwise provided by any law all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused unless with his consent his absence has been dispensed with in accordance with the provisions of this Code.

(2) All evidence shall be recorded in English and if any evidence is given in any other language it shall be interpreted; and 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 the purpose by the Court.

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

### **Recording of evidence**

**50. (1)** The Chief Justice may from time to time give directions as to the manner in which evidence or the substance thereof shall be taken down in any proceedings before any criminal Court.

(2) Subject to the provisions of section 76 of this Code and to any directions issued under the provisions of subsection (1) of this section, in inquiries and trials in criminal matters before the Magistrate's Court, the evidence of the witnesses shall be recorded in the following manner—

- (a) the evidence of each witness, or so much thereof as the presiding Magistrate deems material, shall be taken down by such Magistrate, or in his presence and under his personal direction and superintendence, and shall be signed by the presiding 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.

### **Mode of delivering judgment**

**51. (1)** Except in a case in which the personal attendance of the accused person has been dispensed with under the provisions of this Code or any other law or by leave of the Court, the judgment of any Court in the exercise of its original jurisdiction in any criminal trial shall be pronounced, or the substance of such judgment explained in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their legal representatives, if any:

Provided that the whole judgment shall be read out by the judge or presiding Magistrate if he is requested so to do either by the prosecution or the defence.

(2) In any case in which judgment is required by subsection (1) to be read, or the substance thereof explained, in open Court the accused person shall be required to be present to hear the same.

### **Contents of judgment**

**52. (1)** In the case of a conviction the judgment 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 judgment shall state the offence of which the accused person 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 judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the presiding Magistrate and shall contain the point or points for determination, the decision thereon and the reason 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 person has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the presiding Magistrate at the time of pronouncing it.

### **Accused person entitled to copy of judgment on application**

**53.** On the application of the accused person a copy of the judgment 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.

### **Property found on accused person**

**54.** 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.

### **Disposal of property after completion of trial**

**55.** Any Court before which any person has been tried for an offence involving theft, obtaining property by deception, handling stolen goods or other offence by which he is alleged to have wrongfully come into possession of any property, may direct the restitution of such property to the owner thereof or his representative or, if the owner cannot be found,

may give such directions, at the conclusion of the trial, for the disposal of the property as it thinks fit.

### **Alternative convictions**

**56. (1)** On an indictment for murder a person found not guilty of murder may be found guilty of—

- (a) manslaughter, or of causing grievous bodily harm;
- (b) assisting an offender;
- (c) an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty;
- (d) infanticide;
- (e) killing an unborn child; or
- (f) concealing the birth of a child (where the murder charged is that of a child),

but may not be found guilty of an offence not included above.

(2) Where, on a person's trial for any offence except treason or murder, the Court finds him not guilty of the offence specifically charged but the allegations in the charge or indictment 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 or indictment specifically preferring that other offence.

(3) For the purposes of subsection (2) any allegations 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 (subject to the discretion of the Court to discharge the jury with a view to the preferment of an indictment for the complete offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(4) Where a person pleads not guilty of the offence charged but guilty of some other offence of which he might be found guilty on that charge, and is convicted on that plea of guilty without trial for the offence of which he 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.

### **Accused persons entitled to be present at trial and may be represented by legal practitioner**

**57. (1)** (a) Every person accused of any criminal offence shall be entitled to be present in Court during the whole of his trial unless he so conducts himself in the Court as to render the



continuance of the proceedings in his presence impossible. The Court may, however, in its discretion and subject to the provisions of subsection (2) of section 51, allow any part of any trial to take place in the absence of the accused with the consent of the accused, and may permit the accused to be absent in such case upon such terms as it thinks proper.

(b) For the purposes of this section the consent of the accused person to the conduct of the trial in his absence shall be deemed to have been given in a case in which he enters a written plea of guilty under the provisions of this Code or any other law or in any case in which the Court is satisfied that, having been duly summoned to appear before the Court a reasonable time before the date appointed, the accused person wilfully refuses to attend at any time appointed by the Court.

(2) Every person accused of any criminal offence, whether present in person or absent in accordance with the provisions of this section, may be represented before any Court by a legal practitioner.

## PART IV

### PROCEDURE IN TRIALS BEFORE THE MAGISTRATE'S COURT

#### **Non-appearance of complainant at trial**

**58.** If, in any case which the Magistrate's Court has jurisdiction to hear and determine, the accused person 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 a legal practitioner or other person authorized 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, or take such security for his appearance as the Court shall think fit.

#### **Non-appearance of defendant at the trial**

**59.** 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 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 in accordance with the provisions of section 21 and may adjourn the trial to some other date.

### **When neither party appears**

**60.** If at the time and place appointed for a trial under this Part neither party appears, the Court may dismiss or adjourn the case as shall seem fit.

### **Appearance of both parties**

**61. (1)** Subject to the provisions of section 62, if both parties appear, the Court shall proceed to hear the case and the substance of the charge or complaint shall be read to the accused person 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 58 or 59 for any adjourned hearing, the Magistrate's 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.

### **Accused person may elect for trial on indictment in certain cases**

**62.** When a person is charged with an offence punishable on summary conviction by imprisonment for a term exceeding six months, he shall have a right to elect, if he so desires, to be tried before the High Court, with a jury, and the Magistrate shall inform him of this right, explaining to him the difference in the procedure between summary trial and trial on indictment and the probable time at which he might be brought for trial before the High Court. If such person then elects for trial before the High Court, the Magistrate's Court shall proceed with the case, as if such person had been charged with an indictable offence not triable summarily, in accordance with the procedure provided in Part V:

Provided that this section shall not apply in a case where the accused person is, or appears to the Magistrate to be, under the age of fourteen years, unless the parent or guardian of such person is present, in which case the right of election shall be exercised by such parent or guardian:

Provided further that this section shall not apply to curtail the summary jurisdiction of the Magistrate's Court in any case brought under the provisions of any law which expressly provides that the offence charged shall be tried summarily or which expressly gives the Magistrate's Court a

discretion as to whether to try the offender summarily or to commit him for trial on indictment.

### **If accused pleads guilty**

**63.** If the accused person 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.

### **Pleas in other cases**

**64.** If the accused person pleads not guilty, the Court shall proceed to try the case as hereinafter provided. If the accused person refuses to plead, the Court shall direct that a plea of not guilty be entered for him, or in an appropriate case may act in accordance with the provisions of section 44.

### **Procedure after plea of not guilty**

**65.** If the accused person does not admit the truth of the charge, the Court shall proceed to hear the witnesses for the prosecution. The accused person or his counsel may cross-examine each witness called by the prosecution and if the accused person is not represented by counsel the Court shall, at the close of the examination of each witness for the prosecution, ask the accused person 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.

### **Acquittal of accused person if no case to answer**

**66.** 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 person 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.

### **The defence**

**67. (1)** At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused person sufficiently to require him to make a defence, the Court shall again explain the substance of the charge to the accused and shall inform him that he need not say anything, but that he has a right to give evidence on oath from the witness box and that, if he does so he will be liable to cross-examination, or to make a statement not on oath from the dock, in which case he will not be liable to cross-examination; and the Court shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and shall

then hear the accused and his witnesses (if any), and shall permit the accused to question any witnesses whom he calls.

(2) If the accused person 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 person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the Court may adjourn the trial and issue process or take other steps, as necessary to compel the attendance of such witnesses.

### **Evidence in reply**

68. If the accused person 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.

### **Opening and closing of cases for prosecution and defence**

69. (1) Subject to the provisions of subsection (2), the prosecutor shall be entitled to address the Court at the commencement of his case, and the accused person or his counsel shall be entitled to address the Court at the commencement and in conclusion of his case.

(2) If the accused person, or any one of several accused persons adduces any evidence, the prosecutor shall be entitled to address the Court again.

### **Amendment of charge and variance between charge and evidence**

70. (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:

Provided that where a charge is altered, added or substituted as aforesaid, the Court shall thereupon call upon the accused person to plead to the altered or new charge:

Provided further that in such case the accused person 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 or matters arising out of such further cross-examination.

(2) 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 in fact instituted within

the time (if any) limited by law for the institution thereof and the actual date is not material on any other ground.

(3) Where an alteration, addition or substitution of a charge is made under subsection (1) or there is a variance between the evidence and the charge as described in subsection (2), 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.

### **The decision of the Court**

71. (1) The Court having heard both the prosecutor and the accused person 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 person under the provisions of the Probation of Offenders Act.

(2) The decision of the Court may include an order for the payment of the costs (or any part thereof) of the prosecutor by the accused, in the case of a conviction, or of the accused by the prosecutor in the case of an acquittal.

### **Drawing up conviction**

72. If the Court convicts the accused person, a minute or memorandum thereof shall then be made and the conviction shall afterwards be drawn up by the Magistrate in proper form under his hand and seal, and a copy thereof transmitted by him to the Registrar before the date on which an appeal against the conviction will be heard.

### **Acquittal of accused person to bar further proceedings**

73. If the Court acquits the accused person the Magistrate shall, when requested to do so, make an order for the dismissal of the charge and give the accused person a certificate thereof which, subject to the provisions of sections 30, 31 and 32, shall without further proof be a bar to any subsequent charge for the same matter against the same person.

### **Limitation of time for proceedings for summary offences**

74. Except where a longer time is specially allowed by law, no offence which is triable summarily shall be triable by the Magistrate's Court unless the charge or complaint relating to it is laid within six months from the time when the matter of such complaint or charge arose or the date upon which evidence sufficient to justify proceedings first came to the actual or constructive knowledge of a competent complainant:

Provided that if the circumstances giving rise to the complaint or charge occurred upon a vessel upon the high seas, then the Court shall have jurisdiction in respect thereof if the complaint or charge was laid within six months after the arrival of the vessel at her port of discharge in Montserrat.

**Power of Court in cases triable both summarily and on indictment**

75. If, before or during the course of a trial before the Magistrate's Court, in any case which may be tried summarily or on indictment, it appears to the Magistrate that the case is one which ought to be tried by the High Court, whether or not upon application made by the prosecution or the accused person, the Court may stay all further proceedings in respect of the trial of a matter as a summary offence and in lieu thereof may hold a preliminary inquiry in accordance with the provisions of this Code.

**Special procedure in minor cases where the charge is admitted**

76. (1) Notwithstanding anything contained in this Code, but subject to the provisions of any directions given by the Chief Justice under the provisions of subsection (1) of section 50, a Magistrate may in any case in which the accused person admits the offence, record the proceedings in accordance with the provisions of this section.

(2) In a case to which this section applies it shall be sufficient compliance with the requirements 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 person's statement in full, enters in the record a plea of guilty, and it shall be sufficient compliance with the provisions of section 52, relating to the contents of the judgment, if the judgment 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 decision in any particular case.

**Where Court awards imprisonment without option of fine, prisoner shall be committed to prison**

77. Where the Magistrate's 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.

**Powers of Magistrate when imposing a fine or other monetary penalty**

78. The Magistrate's Court, upon recording a conviction by which any sum (including any costs) is adjudged to be paid, may do all or any of the following things—

- (a) order imprisonment in the first instance unless such sum be paid forthwith;
- (b) allow time for the payment of the said sum;
- (c) direct payment to be made of the said sum by instalments;
- (d) issue a warrant of distress for the levying of the said sum;

- (e) order imprisonment in default or sufficient distress or of the payment of any instalment:

Provided that the Court shall not exercise its powers under paragraph (a) unless it is satisfied that the convicted person has the means to pay forthwith and refuses so to do, or does not desire time to pay or that there are special reasons, to be recorded in the warrant of commitment, why the Court should not allow time for payment:

Provided further that, subject to the express provisions of any other law, a sentence of imprisonment imposed by the Magistrate's Court for non-payment of a sum to which this section refers shall not exceed six months.

### **Withdrawal of complaint**

**79. (1)** With the leave of the Court and notwithstanding any other provisions in this Part the prosecutor may at any time before a final order is passed, in any case triable summarily and in which the accused person has pleaded not guilty, withdraw the complaint.

**(2)** On any withdrawal as aforesaid—

- (a) where the withdrawal is made after the accused person is called upon to make his defence, the Court shall acquit the accused;
- (b) where the withdrawal is made before the accused person is called upon for his defence, the Court shall, subject to the provisions of section 66, at its discretion, make one of the following orders—
- (i) an order acquitting the accused; or
- (ii) an order discharging the accused.

**(3)** An order discharging the accused under paragraph (b)(ii) of subsection (2) shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

**(4)** The provisions of this section are without prejudice to the power of the Attorney General to enter a *nolle prosequi* under the provisions of section 10.

## **PART V**

### **PROCEDURE FOR COMMITTAL OF ACCUSED FOR TRIAL BEFORE THE HIGH COURT**

#### **Power to commit for trial**

**80.** Subject to the provisions of this Code and of the Magistrate's Court Act, the Magistrate's Court may commit any person for trial before the High Court.

**Court to hold preliminary inquiry**

**81.** Whenever any charge has been brought against any person in respect of an offence not triable summarily, or which may be tried either summarily or on indictment and as to which the Court before which the case is brought is of the opinion that it ought to be committed for trial before the High Court or the accused person having a right to elect, under section 62, desires to be tried before the High Court, a preliminary inquiry shall be held in accordance with the provisions hereafter in this Code contained.

**Magistrate to read charge to accused and explain purpose of the proceedings**

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

**Taking of depositions**

**83. (1)** When an accused person is brought before the Magistrate's Court, whether on summons, warrant or otherwise, 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 on oath 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 person or any legal practitioner 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 depositions of such witness.

**(3)** If the accused person is not represented by a legal practitioner, the Magistrate shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any question to that witness.

**(4)** 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 (5) shall, if necessary, be corrected.

**(5)** 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 a witness and shall add any remarks as to the matter as he thinks necessary.

(6) 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.

(7) 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.

### **Variance between evidence and charge**

84. 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 person has been thereby deceived or misled, the Court may, on the application of the accused person, adjourn the inquiry or may allow any witness to be recalled, and such questions to be put to him as by reason of the terms of the charge may have been omitted.

### **Remand**

85. (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; or, 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 person 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 before it and, subject to the provisions of section 27, may on a remand at any time admit the accused to bail:

Provided that the Court shall not grant any remand or sequence of remands exceeding in the aggregate fifteen clear days, otherwise than at the request or with the consent of the prosecutor.

### **Provisions as to taking statements or evidence of accused person**

86. (1) If, after the examination of the witnesses called on behalf of 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 satisfy himself that the accused understands the charge and shall ask the

accused whether he wishes to make a statement in his defence or not and, if he wishes to make a statement, whether he wishes to make it on oath, or not, the Magistrate shall also explain to the accused that he has nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to induce him to make any admission or confession of guilt, that he is not bound to make a statement, and that his statement, if he makes one, may be part of the evidence at his trial.

(2) Everything which the accused person says, either by way of statement or evidence, 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.

(3) When the whole is made conformable to what the accused person declares is the truth, the record thereof shall be attested by the Magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused person. The accused person shall sign, or attest by his mark, such record, and if he refuses, the Court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

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

### **Procedure if offence admitted by accused**

**87.** If, in any statement made to the Court under the provisions of section 86, the accused person admits that he is guilty of the offence charged, if such offence is not one of treason or murder, the Court shall proceed in accordance with the provisions of Part VI.

### **Evidence and address in defence**

**88. (1)** Subject to the provisions of section 87, immediately after complying with the requirements of section 86, relating to the statement or evidence of the accused person, and whether the accused person has or has not made a statement or given evidence, the Magistrate shall ask him whether he desires to call witnesses on his own behalf.

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

(3) If the accused person 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 person, and that there is a likelihood that they could if present give material

evidence on behalf of the accused person, 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 recognizance in the same manner as witnesses under subsection (2).

(4) In any preliminary inquiry under this Part the accused person or his counsel (if any) shall be at liberty to address the Court—

- (a) after the examination of the witnesses called on behalf of the prosecution;
- (b) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person; or
- (c) if the accused person elects—
  - (i) to give evidence or to make a statement and witnesses for the defence are to be called; or
  - (ii) not to give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(5) If the accused person or his counsel addresses the Court in accordance with the provisions of subsection (4) the prosecution shall have the right of reply.

(6) Where the accused person 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 him whether he intends to call witnesses at the trial, other than any whose evidence has been taken under the provisions of this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The Magistrate shall thereupon record the names and addresses of any witnesses whom the accused person may mention.

### **Discharge of accused persons**

**89.** 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 person is not sufficient to put him on his trial, the Court shall forthwith order him to be discharged as to the particular charge under inquiry, but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided that nothing contained in this section shall prevent the Court from proceeding either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, from the evidence given in the course of the hearing of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

### **Summary adjudication in certain cases**

**90.** If at the close of or during the preliminary inquiry, it shall appear to the Court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the Court and is not a case in which the accused has a right to elect to be tried on indictment and has so elected, the Court may, subject to the other provisions of this Code, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he may require to be recalled.

### **Committal for trial**

**91. (1)** If the Magistrate's Court considers the evidence sufficient to put the accused person 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 send him to prison for safekeeping. The warrant of such first-named Court shall be sufficient authority for the detention of the person therein named by the officer in charge of any prison.

**(2)** In the case of a corporation the Court may, if it considers the evidence sufficient to put the accused corporation on trial, make an order authorising the Attorney General to file an indictment against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.

### **Complainant**

**92.** When an accused person is committed for trial before the High Court, subject to the provisions of this Code with regard to witnesses who are about to leave Montserrat or who are ill, the Magistrate's Court committing him shall bind by recognizance, with or without sureties as the Court may deem requisite, the complainant and every witness to appear at the trial to prosecute or to prosecute and give evidence, as the case may be, and also to examination concerning the charge which may be held by direction given by the Attorney General under section 102:

Provided that if the complainant is acting on behalf of the Crown, the Attorney General, 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 recognizance or to give any security.

### **Refusal to be bound over**

**93.** If a person refuses to enter into a recognizance when lawfully required to do so, the Court may commit him to prison or into the custody of any officer of the Court, there to remain until after the trial, unless in the meantime he enters into a recognizance. If afterwards, from want of

sufficient evidence or other cause, the accused is discharged, the Court shall order that the person imprisoned for so refusing be also discharged.

### **Accused person entitled to copy of depositions**

**94.** A person who has been committed for the trial before the High Court shall be entitled at any time before the trial to have a copy of the depositions without payment, once the same have been provided to the High Court.

### **Binding over of witnesses conditionally**

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

**(2)** Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General 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 at any time thereafter to the Registrar of the High Court, that he desires the witness to attend at the trial, and the Registrar shall forthwith notify the witness that he is required to attend in pursuance of his recognizance.

The Magistrate's Court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and the steps which he must take for the purposes of enforcing such attendance.

**(3)** Any documents or articles produced in evidence before the Magistrate's Court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the proviso of this section and marked as exhibits shall, unless in any particular case the Magistrate's Court otherwise orders, be retained by the Magistrate's Court and forwarded with the depositions to the Registrar.

### **Deposition of witness who is ill or about to leave Montserrat**

**96.** If it is proved upon oath before any Magistrate that any person is dangerously ill and unable to travel, or is about to leave Montserrat for a

period extending beyond the time when the accused, if committed for trial, would be tried, and that such person is able and willing to give material information as to any offence which the Magistrate's Court is not empowered to try summarily, and with which any person has been charged (whether the preliminary inquiry has or has not been held or is in progress, but not after the accused has been discharged) the Magistrate may take the deposition of such person at the place where such person is lying sick or, if such person is about to leave Montserrat as aforesaid, in the Court, in the manner prescribed by this Code, and shall, after taking it, sign it, adding to it by way of heading a statement of the reason for taking it, and of the day upon which and place at which it was taken, and of the names of the persons, if any, present at the taking thereof.

### **Notice to be given**

**97.** Whenever it is intended to take any deposition under the provisions of section 96, reasonable notice that it is intended so to be taken shall, if the accused is in prison be served upon him in prison, or if he is on bail shall be either served upon him or left with an adult inmate at his last or most usual place of abode. If the accused is in prison, the Magistrate shall, by an order in writing, direct the gaoler having the custody of the accused to cause him to be conveyed to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to be conveyed back to prison when it has been taken, but no accused person shall be taken to any such place (other than the Court) for such a purpose without his consent.

### **Magistrate to deal with deposition like any other deposition**

**98.** If any deposition taken under the provisions of section 96 relates to an offence, the preliminary inquiry into which has ended, the Magistrate taking it shall send it to the Registrar to be placed with the other depositions taken in the case, and if it relates to an offence with which some person has been charged, and as to which a preliminary inquiry is in progress, the Magistrate shall deal with it like any other deposition taken in the matter under preliminary inquiry; but such person as aforesaid so making a deposition shall not be called upon to enter into a recognizance to give evidence at the trial of the accused.

### **Deposition to be admissible in evidence**

**99.** Every deposition taken under the provisions of section 96 shall be a deposition taken in the case to which it relates, and shall be admissible in evidence of the same conditions as other depositions:

Provided that it 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 had any opportunity of cross-examining the witness, if it is proved that the accused having received such notice aforesaid that such deposition was about to be

taken, refused, or neglected to be present, or to cause his counsel to be present when it was taken:

Provided further that if it is proved that the person whose evidence has been taken as aforesaid has so recovered from his sickness or returned to Montserrat as to be able to be present at the sessions at which the accused is tried, such deposition taken as aforesaid shall not be read.

**Accused to have the same privileges as prosecutor under section 96**

**100.** Any person charged with having committed an offence not punishable summarily may on notice to the complainant require that the evidence of any such person as in section 96 mentioned may be taken on behalf of the defence in like manner, and any deposition so taken shall be dealt with, and be admissible in evidence on the same conditions as other depositions and on conditions corresponding to those mentioned in section 99.

**Transmission of records to High Court and Attorney General**

**101.** In the event of a committal for trial the written charge, the depositions, the statement (if any) of the accused person, the recognizances of the complainant and the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence shall be transmitted without delay by the committing Court to the Registrar, and an authenticated copy of the depositions, the statement aforesaid and any documentary exhibits shall be supplied to the Attorney General at the same time by the Magistrate's Court.

**Power for the Attorney General to refer case back to Magistrate for further preliminary inquiry**

**102.(1)** After the receipt by the Attorney General of an authenticated copy of the depositions, recognizances and other documents forwarded to him in relation to any case committed for trial, the Attorney General may at any time refer back such documents to the Magistrate's 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 Attorney General may think proper.

**(2)** Subject to any express directions which may be given by the Attorney General, the effect of any such reference back to the Magistrate's Court shall be that the inquiry shall be re-opened and dealt with in all respect as if the accused person had not been committed for trial.

**Mode of trial upon committal to the High Court and preferment of indictment**

**103.(1)** Every person committed for trial before the High Court shall be tried on an indictment preferred by the Attorney General, and such trial

shall be had by and before a Judge and a jury to be summoned, drawn and empanelled according to the provisions of the Jury Act.

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

(3) In any indictment the Attorney General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused person has been committed for trial.

### Notice of trial

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

“A. B.

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

### Service of copy of indictment and notice of trial

105.(1) The Registrar shall deliver or cause to be delivered to the officer of the Court serving the indictment a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the Court aforesaid shall, as soon as may be after having received the copy or copies of the indictment and notice or notices of trial, and three days at least before the day for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the indictment and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said indictment and notice of trial with someone of his household for him at his dwelling house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the out or principal door of the dwelling house or houses of the accused person or of any of his bail:

Provided that nothing herein contained 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 express his assent to be so tried and no special objection be made thereto on the part of the Crown.



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

### **Postponement of trial**

**106.(1)** The High Court upon the application of the prosecutor or the accused person, if the Court considers that there is sufficient cause for the delay, may postpone the trial of any accused person to the next sessions of the Court or to a subsequent session and may respite the recognizances of the prosecutor and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances 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 the service of any notices which the Court may deem necessary in consequence of any order made under subsection (1).

## PART VI

### COMMITTAL OF ACCUSED FOR SENTENCE

#### **Procedure where accused admits guilt at preliminary inquiry**

**107.(1)** If in a case not involving a charge of treason or murder, the accused person, in a statement made to the Magistrate's Court under section 86, 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 person, 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 Part but shall commit the accused for trial in accordance with the procedure in Part V.

(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 recognizances.

(4) The Magistrate, in a case to which this section applies, shall order the accused person 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 to 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.

#### **Transmission of record of proceedings**

**108.(1)** The Magistrate shall, as soon after such committal as is practicable, transmit the complaint or information, depositions, and any statement or confession 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 Attorney General, and the Registrar shall, as soon as practicable after receiving the same, deliver them to the Judge and the Attorney General.

(2) The Attorney General shall, as soon as practicable after receiving a copy of such record of proceedings at the preliminary enquiry, prefer and file an indictment against the accused person committed for sentence.

#### **Accused to be brought before Judge to be dealt with**

**109.(1)** As soon as conveniently may be after the filing of an indictment against an accused person committed for sentence, the Registry shall issue a summons to the accused person to appear and if he is in custody an order to the gaoler to bring the prisoner before a Judge of the High Court at a time to be fixed by the Judge, and the Registrar shall notify the Attorney General accordingly.

(2) The accused person 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 in the indictment, or with the consent of the prosecutor, of any other offence of which he might be convicted on the indictment.

(3) If the accused person pleads in the High Court that he is not guilty, or if although he pleads that he is guilty it appears to the said Court upon the examination of the depositions of the witnesses that he has not in fact 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 is to proceed as in other cases when that plea is entered, and the Judge shall postpone the case for trial by a jury at the regular criminal sessions of the High Court, and may remand the accused to prison or admit him to bail in the meantime.

(4) A person who has been committed for sentence may plead *autrefois acquit*, *autrefois convict*, pardon, or such special plea as he would be permitted to plead according to the law of England for the time being in force, and in such case unless the accused and the prosecutor and the Judge

consent to the issue being tried by the Judge, without a jury, the Judge shall postpone the case for a trial by a jury as in the preceding subsection provided.

#### **Withdrawal by accused of consent to his committal for sentence**

**110.(1)** A person 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 the prisoner shall not be taken before the High Court for sentence but shall be deemed to have been committed for trial at the next sessions of the said Court, and the provisions of Part VII shall apply accordingly.

**(2)** The notice referred to in subsection (1) shall be filed of record in the Registrar's office, and the Registrar shall notify the Attorney General of the withdrawal of the consent to committal for sentence; and such notice may be put in evidence at the trial or mention may be made at the trial of the fact that such notice was given.

#### **Powers of Court and Judge when dealing with committals for sentence**

**111.(1)** A Judge of the High Court 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 the said Court.

**(2)** The Registrar or other proper officer 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 in the Court.

#### **Notice by person committed for trial of intention to plead guilty**

**112.(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 criminal sessions of the High Court, file with the Registrar a notice in writing to that effect, and the notice shall be filed on record in the Registrar's office.

**(2)** In such case the Registrar shall notify the Judge and the Attorney General, or other prosecutor, of such notice and the subsequent proceedings shall be as in the case of a person committed for sentence and the provisions of sections 109, 110 and 111 shall *mutatis mutandis* apply accordingly.

## PART VII

## PROCEDURE IN TRIALS BEFORE THE HIGH COURT

**Practice of High Court in the exercise of its criminal jurisdiction**

**113.** Subject to the provisions of this Code and to any other law for the time being in force in Montserrat, the practice of the High Court in the exercise of its criminal jurisdiction and the mode of conducting and the procedure at the trial of any person upon indictment shall be assimilated so far as circumstances admit to the practice of Courts of equivalent jurisdiction in England.

**Bench warrant where accused does not appear**

**114.** 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 recognizances or not, the Court may issue a warrant for his arrest.

**Bringing up prisoner for trial**

**115.** If any person against whom an indictment is preferred is at the date appointed for the trial thereof confined in prison for some other cause, the Judge, by order in writing, may direct the gaoler 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 gaoler. 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.

**Arraignment of accused**

**116.(1)** An accused person 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 person 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 105 or he raises objection to the indictment as hereafter in this Code provided.

**(2)** 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 so appear, fails to enter a plea, the Court shall cause a plea of not guilty to be entered.

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 person (by whatever named 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 that person has been so appointed.

### **Objection to indictment on grounds of insufficiency of particulars**

**117.(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 person, 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.

### **Amendment of indictment, separate trial and postponement of trial**

**118.(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 to 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 persons 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 persons 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 provisions 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) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found 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
- (b) the Court may make such order as to admitting the accused to bail and as to the enlargement of recognizances 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.

### **Quashing of Indictment**

**119. (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 judgment.

(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 to the Court 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 judgment.

(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.

### **Charge of previous conviction**

**120.** Where an indictment contains a count 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 the count be mentioned to the jury when the accused is given in charge to them, or when they are sworn, nor shall he be tried upon it if he is acquitted on the other counts; but, if he is convicted on any other part of the indictment he shall be asked whether he has been previously 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.

### **Pleading to the Indictment**

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

### **Refusal or incapacity to plead**

**122.(1)** If an accused person 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)** If it appears, before or upon arraignment, that an accused person may be insane, the Court may order a jury to be empanelled to try his sanity, and the jury shall thereupon after hearing evidence for that purpose, find whether he is or is not insane and unfit to stand his trial. If the finding of the jury is that the accused person is insane and unfit to stand his trial the provisions of section 156 shall apply.

### **Proceedings when plea made**

**123.(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 122, the Court shall proceed to try the case.

**(3)** Every plea, including any special plea hereafter in this Code provided for, 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.

### **Special pleas allowed to be pleaded**

**124.(1)** The following special pleas, and no other, 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, should be reduced to writing, and shall be filed with the Registrar.

### **General effect of pleas of *autrefois acquit* and *convict***

**125.(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 plea is pleaded, subject to subsection (2) the Court shall give judgment 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 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 as to the other offence charged.

(3) Upon the trial of an issue to which this section refers, the Judge 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 on the count to which he has pleaded *autrefois acquit* or *autrefois convict*; but 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.

### **Effects where previous offence charged was without aggravation**

**126.(1)** Subject to the provisions of section 31, where an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances or aggravation tending, if proved, to increase the punishment, the previous acquittal or conviction shall be to the subsequent indictment.

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

### **Use of depositions, etc., on former trial, or trial of special plea**

**127.** On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the depositions 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.

### **Power to postpone or adjourn trial**

**128.(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 the prison or other place or 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) and of sections 131 and 142, 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.

### **Procedure relating to jurors**

**129.** 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 contained in the Jury Act.

### **Giving prisoner in charge of jury**

**130.** 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 offences 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".

### **Case for the prosecution**

**131.** 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.

### **Additional evidence for the prosecution**

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

Such notice must 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.

(2) 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 person notice in writing of the substance of the new evidence, and such notice shall be deemed to form part of the depositions.

### **Cross-examination of prosecution witnesses**

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

### **Deposition may be read in certain cases**

**134.** 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 on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances, as that offence. The conditions hereinafter referred to 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 95; or
  - (ii) of a witness whose deposition was taken in accordance with the provisions of section 96 and who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Montserrat or so ill as not to be able to travel; or
  - (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 Montserrat or so ill as not to be able to travel; or
  - (iv) of a witness who is proved to the satisfaction of the Court, by evidence on oath, to be kept away by means of the procurement of the accused or on his behalf;
- (b) the deposition must purport to be signed by the Magistrate before whom it purports to have been taken:

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

- (i) that the deposition was not in fact signed by the Magistrate before whom it purports to have been signed; or

- (ii) that the deposition is that of a witness whose attendance at the trial was stated to be unnecessary as aforesaid, and the witness has been duly notified subsequently that he is required to attend the trial.

### **Statement of accused**

**135.** The statement or evidence (if any) of the accused person duly recorded by or before the committing Court, and whether signed by the accused person 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 in fact sign it.

### **Close of case for prosecution**

**136.(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 person before the committing Court has been given in evidence, the Court, if it considers that there is evidence that the accused person, or any one or more of several accused persons, committed the offence, shall inform each such accused person of his right to address the Court, either personally or by his counsel (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof, the Judge shall record the same.

### **Case for the defence**

**137.** The accused person 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 person may then give evidence on his own behalf and he or his counsel may examine his witnesses (if any) and after their cross-examination by the prosecution and re-examination (if any) may sum up his case:

Provided that the accused person or his counsel shall not open the case for the defence by addressing the Court if no witnesses as to the facts are to be called by the defence except the accused person.

### **Additional witness for the defence**

**138.** The accused person 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 person 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.

### **Evidence in reply *ex improviso***

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

### **Where accused adduces no evidence**

**140.** If the accused person says that he does not desire to call evidence and the Court considers that there is evidence on which he could be convicted of the offence, counsel on both sides or the accused person if he is unrepresented may address the Court.

### **Right to reply**

**141.** Upon the trial of any person on indictment—

- (a) the prosecution shall not be entitled to the right to reply on the ground only that the Attorney General appears for the Crown at the trial; and
- (b) the time at which the prosecution is entitled to exercise any right of reply shall, notwithstanding any other law or practice, be after the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the accused.

### **Court may require witness to be called**

**142.** 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.

### **Recalling a witness**

**143.** The Judge shall have power in his discretion at any stage of the trial, prior to the conclusion of the summing up, to call any witness, whether or not such witness has been called before the Court in the course of the trial or not, and to examine such witness, if a witness for the prosecution is recalled by the Judge or by leave of the Judge, the accused or his counsel

shall be allowed to cross-examine him on the new evidence given. In any other case a witness called under the provisions of this section may only be cross-examined by either party with the leave of the Judge.

### **Summing up by the Judge**

**144.** When the case on both sides is closed the Judge shall, as necessary, sum up the law and the evidence in the case.

### **Consideration of verdict by jury**

**145.** After the summing up, the jury shall consider their verdict.

### **Recording of verdict**

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

### **Verdict of not guilty**

**147.** If the jury finds the accused not guilty, he shall be immediately discharged from custody on that indictment.

### **Calling upon the accused**

**148.** If the accused person is convicted, or if the accused pleads guilty, the Registrar 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.

### **Motion in arrest of judgment**

**149. (1)** The accused person may at any time before sentence whether on his plea or otherwise move in arrest of judgment 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 decides in favour of the accused, he shall be discharged from that indictment.

### **Evidence for arriving at proper sentence**

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

## Sentence

**151.(1)** If no motion in arrest of a judgment is made, or if the Court decides against the accused person upon such motion, the Court may sentence the accused person 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 recognizances or on that of such sureties as the Court may think fit, or both, to appear and receive judgment 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 purposes 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.

## Recording of judgment

**152.** The judgment or sentence of the Court shall be entered by the Registrar on the back of the indictment or on a sheet of paper annexed thereto.

## Objections cured by verdict

**153.** No judgment shall be stayed or reversed on the ground of any objection, which if stated after the indictment was read over to the accused person, 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.

## Time for raising objections

**154.** 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:

Provided that 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.

### **Minute of proceedings in trial before High Court**

**155.(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 judgment 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.

## **PART VIII**

### **PROCEDURE RELATING TO PERSONS FOUND INSANE**

#### **Special verdict where accused found guilty, but insane at date of offence charged**

**156.** Where in any indictment any act or omission is charged against any person as an offence and it is given in evidence on his trial for that offence that he was insane so as not to be responsible, according to law, for his action at the time when the act was done or omission made, then, if it appears to the jury before whom he is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

#### **Provision for custody of accused person found insane**

**157.(1)** Where any person is found to be insane before or upon arraignment, in accordance with the provisions of subsection (2) of section

122, or a special verdict is formed against him under the provisions of section 156, the Court shall order him to be conveyed to any hospital or other place for the time being appointed under any law to be a public asylum for persons of unsound mind or for the reception of criminal persons of unsound mind, there to be kept until discharged by order of the Governor.

(2) Whenever any convict shall be sent to any hospital or other place under the provisions of this section, it shall be lawful for the officers of such hospital or place to exercise all and singular the same and the like powers and authorities for the restraint and punishment of such convict as can by law be exercised by or are vested in the gaoler or other officers in respect of persons sentenced to imprisonment.

(3) The Governor may from time to time issue all necessary orders for the care, control and custody of any such convicted persons of unsound mind .

## PART IX

### PROVISIONS RELATING TO THE FRAMING OF INDICTMENTS

#### **Offence to be specific in indictment**

**158.** Every indictment shall contain, and, subject to the provisions of this Code, 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 alleged and the acts or omissions alleged to have given rise to the offence.

#### **Joinder of counts in indictment**

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

(2) Where more than one offence is alleged in an indictment, a description of each offence so charged shall be set out in a separate paragraph of the charge or indictment called a count.

(3) Where, before trial or at any stage of a trial the Court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same indictment or that for any other reason it is desirable to direct that the accused person is tried separately for any one or more offences alleged in the indictment, the Court may order a separate trial of any count or counts of such indictment.



### **Joinder of two or more accused in one indictment**

**160.** The following persons may be joined 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 of an attempt to commit such offence;
- (c) persons accused of different offences committed in the course of the same transaction;
- (d) persons accused of different offences all of which are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

### **Rules for the framing of indictments**

**161.(1)** The provisions of the Rules set out in Schedule II to this Code shall apply with respect to all indictments, and notwithstanding any rule of law or practice 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)** Without prejudice to the provisions of subsection (1), no count shall be deemed objectionable or insufficient on any of the following grounds, namely that—

- (a) it contains only one name of the accused;
- (b) one name only or no name of the injured person is stated;
- (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 words used 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 person so require, the Court shall order that the complainant or the prosecutor shall furnish particulars further describing or specifying any of the foregoing matters.

**Application of Part IX and Rules to charges before Magistrate's Court**

**162.** The provisions of this Part and of the Rules set out in Schedule II shall apply *mutatis mutandis* with respect to charges triable summarily before the Magistrate's Court:

Provided that rules 1 and 2 of the said Rules shall not apply to such charges and the formal matters and commencement in the case of such charges shall be in conformity with the practice heretofore in use in Courts of summary jurisdiction in Montserrat.

**PART X****APPEALS FROM MAGISTRATE'S COURT****Appeals from decisions of Magistrate's Court**

**163.(1)** Save as hereafter in this Code provided, any person who is dissatisfied with any judgment, sentence or order of the Magistrate's Court in any criminal cause or matter to which he is a party may appeal to the Court of Appeal against such judgment, sentence or order either 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 Part:

Provided that in no case shall the complainant appeal from a decision dismissing a complaint except by way of a case stated on a point of law.

**(2)** For the purposes of any appeal the Attorney General 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 Attorney General under the provisions of subsection (5) of section 11.

**Magistrate to inform accused person of right to appeal**

**164.(1)** When any person is convicted by the 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 and 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 fourteen days after the day upon which the decision was given from which the appeal is made, shall serve 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:

Provided that any person aggrieved by the decision of the 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, and 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.

### **Limitations on right of appeal**

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

### **Appeal to operate as a stay**

**166.** 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 motion or by special case stated as hereafter in this Code provided:

Provided that 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 169:

Provided further that where the decision involves the cancellation or suspension of any licence to drive a motor vehicle such licence shall be deemed to be suspended until the determination of the appeal unless any Court shall otherwise direct upon application made by the appellant.

### **Recognizance for security to be taken**

**167.** The appellant shall within three days after the day on which he served notice of his intention to appeal enter into a recognizance before a Magistrate, with or without sureties as the Magistrate may direct, conditioned to prosecute the appeal to judgment thereon of the Court, and to pay such costs as may be awarded by it, or if the Magistrate thinks it expedient the appellant may instead of entering into recognizances 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 Attorney General, 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 recognizance or to give any security.

### **Transmission of appeal papers**

**168.** As soon as the appellant has filed the notice of appeal and has complied with any requirements of section 167, the Magistrate's Court shall without delay transmit to the Court of Appeal a copy of the conviction, order or judgment 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 three 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.

### **Admission of appellant to bail**

**169.(1)** 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.

### **Case stated**

**170.** In all cases of appeal by way of case stated the appellant shall, within the times and in the manner and form herein before prescribed, serve a notice of appeal and enter into recognizances, and shall within fourteen 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.

### **Remedy if case stated refused**

**171.** 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 Attorney General.

### **Duty of Magistrate's Court as to case stated**

**172.(1)** The 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 171 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 questions raised in the case, and shall forthwith transmit the same together with a copy of the conviction, order or judgment 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, information 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 person 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 which 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 Attorney General may require to be submitted for the opinion of the Court of Appeal.

### **Appellant entitled to copies of evidence**

**173.** On an appeal by motion the appellant on serving notice on the Magistrate's Court of his intention to appeal and on entering into recognizances 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 judgment made or given.

#### **Court to set appeal down for argument**

**174.** 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, 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.

#### **Appeal not a re-hearing unless the Court so directs**

**175.** 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 judgment 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.

#### **Procedure on hearing of appeal on motion**

**176.** At the hearing of an appeal on 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.

#### **Court on hearing appeal on motion to decide on facts as well as law**

**177.** 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.

#### **On appeal by special case Court confined to facts and evidence stated therein**

**178.** 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 of Appeal may remit the case to the Magistrate's Court for amendment or restatement if necessary, or for re-hearing and determination in accordance with such directions as may be deemed necessary.

### **Powers of Court on hearing appeals**

**179.** 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 other 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.

### **Costs**

**180.** 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.

### **Where appeal is abandoned Court may give respondent his costs**

**181.** 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.

### **No appeal on point of form or matter of variance**

**182.** No judgment 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 matter 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.

### **Court may decide on merits notwithstanding any defect in form**

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

### **Defect in order or warrant of commitment not to render void**

**184.** 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.

**Where conviction confirmed, warrant may issue as though no appeal had been made**

**185.(1)** Whenever the decision of the 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 registrar of that Court and shall also endorse on the conviction, order or judgment appealed against, a memorandum of the decision of the Court of Appeal, and whenever any copy or certificate of such conviction, judgment 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 or certificate would be sufficient evidence of such conviction, order or judgment.

PART XI

MISCELLANEOUS

**Powers of High Court in respect of *habeas corpus*, etc**

**186.** Subject to section 184, nothing in this Code shall be construed to affect or limit the powers of the High Court to issue orders of *certiorari*, *habeas corpus*, *mandamus*, and prohibition in respect of proceedings thereupon and for any purposes connected therewith.

**Code not to affect certain powers**

**187.** Nothing in this Code shall be construed to affect or limit the powers conferred upon any Court in respect of young persons or juveniles under the Juveniles Act or under the provisions of the Magistrate's Court Act, or in respect of any person under the Probation of Offenders Act.

**General power to require recognizance to keep the peace**

**188.** Any person may by complaint made to the Magistrate's Court call upon any other person to show cause why that other person should not be bound over in recognizances—

(a) to keep the peace; or



(b) to be of good behaviour toward any particular person, and the Court may make an order adjudging the person complained against to enter into recognizances and find sureties in that behalf, and the complainant and defendant and witnesses may be called and examined and cross-examined, and the parties and witnesses in such case shall be subject to all the provisions of this Code relating to trial before such Court.

### **Seizure of property obtained by offence**

**189.(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, and 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 for the use of Montserrat and shall be paid into the Consolidated Fund established under the Finance (Administration) Act.

(2) Any Court may order the seizure of any 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 authorized to issue for the purpose.

### **Copies of proceedings**

**190.** Subject to the provisions of section 53, if any person affected by any order made or judgment passed in any proceedings under this Code desires to have a copy of such order or judgment, 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.

### **Criminal informations abolished**

**191.(1)** Any power to bring proceedings for an offence by criminal information in the High Court is hereby abolished.

(2) For the avoidance of doubt, nothing in this section shall be construed to affect the power under common law to prefer a Bill of Indictment.

**Rules**

**192.** The power conferred on the Chief Justice and any two Judges of the Supreme Court to make Rules of Court, under section 85 of the Supreme Court Act, 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 20, and generally for carrying into effect the provisions of this Code.

---

**SCHEDULE I**

*(Section 26(1))*

**FORM OF SEARCH WARRANT**

To:.....

WHEREAS I am\*/the Court is\* satisfied by information on oath that there is reasonable suspicion of the commission of the offence of ..... and it has been made to appear to me\*/this Court\* that there are articles essential to the inquiry into the said offence in or upon the premises of ..... situated at .....

NOW, THEREFORE, this warrant is to authorize and require you to enter upon and search the said premises and, if any such articles are discovered, to take possession of such articles<sup>†</sup> and to produce them forthwith before a Court, returning this warrant to the Court with an endorsement certifying the manner of execution thereof.

Given under my hand (and the seal of the Court)\* this ..... day of ..... 20..... .

Magistrate\* Justice of the Peace\*

\* *Delete as necessary*

<sup>†</sup> *Particulars of the actual articles to be seized should be inserted if possible.*

\_\_\_\_\_

**SCHEDULE II***(Section 161)***RULES FOR FRAMING INDICTMENTS****Material, etc. for indictment**

1. (1) An 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 17 and not less than 13 inches in length, and not more than 14 and not less than 8 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 2 inches in width shall be kept on the left hand side of the 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.

**Commencement of indictment**

2. The commencement of an indictment shall be in the following form—

MONTSERRAT  
IN THE HIGH COURT OF JUSTICE  
(Criminal)

Case No. .... of 19/20.....

THE QUEEN  
V.  
A.B.

Indictment by the Attorney General of Montserrat

A.B. is charged with the following offence—

**Mode in which offences are to be charged**

3. (1) A description of the offence charged in an indictment, 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 enactment, shall contain a reference to the section of the enactment creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, which the use of technical terms shall not be necessary:

Provided that where any rule of law or any enactment limits the particulars of an offence which are required to be given in an indictment, nothing in this rule shall require any more particulars to be given than those so required.

(5) Where a charge or indictment contains more than one count, the counts shall be numbered consecutively.

#### **Provisions as to statutory offences**

4. (1) Where an enactment 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 enactment, 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 enactment creating the offence.

#### **Description of property**

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.

#### **Description of persons**

6. The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, 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”.

#### **Description of document**

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.

#### **Description of engraving**

8. In a count in respect of an offence for engraving, or making the whole or any part of any instrument, matter or thing 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 unlawful possession of any paper upon which the whole or any 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.

#### **Description of money**

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 of 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 advantage by deception, by 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.

#### **General rule as to description**

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 a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

#### **Statement of intent**

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 statute creating the offence does not make any intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

#### **Charge of previous convictions, etc**

12. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of 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 120.

---







Printed by the Law Revision Unit of the Government of Montserrat  
Authorised Printers for this revised edition