CRIMINAL PROCEDURE ACT

ARRANGEMENT OF SECTIONS

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Criminal Procedure Act

CITATION
An Act to make provision for the procedure to be followed in criminal cases in the High Court and Magistrates' Courts

COMMENCEMENT
1st June, 1945

Chapter I
Preliminary, Arrests, Bail and Preventive, Justices

Part 1
Preliminary

1. (1) This Act may be cited as the Criminal Procedure Act.

(2) Chapter 12 of this Act shall apply to the Federation of Nigeria.

2. (1) In this Act, unless the context otherwise requires-

"adult" means a person who has attained the age of seventeen years or over;

"charge" means the statement of offence or statement of offences with which an accused is charged in a summary trial before a court;

"Chief Judge" means the Chief Judge of the High Court;

"child" means any person who has not attained the age of fourteen years;

"complainant" includes any informant or prosecutor in any case relating to a summary conviction offence;

"complaint" means the allegation that any named person has committed an offence made before a magistrate for the purpose of moving him to issue process under this Act;

"court" includes the High Court and a magistrate's court;

"defendant" means any person against whom a complaint is made;

"district" means a district into which a State is divided for the purposes of any Law under which a magistrate's court is established;

"division" means a judicial division of the High Court;

Federal law" means any Act enacted by the National Assembly having effect with respect to the Federation and any Ordinance enacted prior to 1st October, 1960 which under the Constitution of the Federal Republic of Nigeria has effect with respect to the Federation;

"felony" means an offence on conviction for which a person can, without proof of his having been previously convicted of an offence, be sentenced to death or to imprisonment for three years or more, or which is declared by law to be a felony;

"fine" includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction;

"future enactment" means any enactment passed after the commencement of this Act;

"guardian" in relation to a child or young person means the parent or other person having lawful custody of such child or young person, and includes any person who, in the opinion of the court having cognisance of any case in which such child or young person is concerned, has for the time being the custody, control over, or charge of such child or young person;

"High Court" means the High Court of the State or the Federal High Court;

"indictable offence" means any offence-

(a) which on conviction may be punished by a term of imprisonment exceeding two years, or

(b) which on conviction may be punished by imposition of a fine exceeding four hundred naira;

not being an offence declared by the law creating it to be punishable on summary conviction;

"indicted" means the filing of an information against a person who is committed for trial to the High Court after preliminary inquiry by a magistrate;

"infant" means a person who has not attained the age of seven years;

"Judge" means a Judge of the High Court;

"justice of the peace" means a person appointed to be a justice of the peace under the law of a State;

"juvenile offender" means an offender who has not attained the age of seventeen years;

"law officer" has the meaning assigned thereto in the Criminal Code;

"law of a State" means any written law in force in a State which is not a Federal law;

"legal guardian" in relation to an infant, child, young person, or juvenile offender, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

"magistrate" means a magistrate appointed in accordance with the law of a State;

"magistrate's court" means a magistrate's court established under the law of a State;

"offence" means an offence against any enactment in force in, a State;

"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station building or unable for any reason to perform his duties, the police officer present at the station building who is next in seniority to, or who in the absence of such officer in charge performs the duty of, such officer;

"open court" means any room or place in which any court shall be sitting to hear and determine any matters within its jurisdiction and to which room or place the public may have access so far as the same can conveniently contain them;

"order" includes any conviction in respect of a summary conviction offence;

"penalty" includes any pecuniary fine, forfeiture, costs, or compensation recoverable or payable under an order;

"place of safety" includes any suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

"police officer" includes any member of the police force established by the Police Act;

"preliminary inquiry" means an investigation of a criminal charge held by a magistrate's court with a view to the committal of an accused person for trial before the High Court;

"prescribed" means prescribed by rules made under the authority of this Act;

"registrar" includes the Chief Registrar and a registrar of the High Court and of a magistrate's court;

"rules" or "the rules" means rules of court relating to the practice and procedure of the High Court or of the magistrates' courts in the exercise of their criminal jurisdiction;

"sentenced to imprisonment" shall include cases where imprisonment is imposed by a court on any person either with or without the option of a fine, or in respect of the non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone, and the expression "sentence of imprisonment" shall be construed accordingly;

"sheriff" means a sheriff within the meaning of the Sheriffs and Civil Process Act and includes

a deputy sheriff and any person authorised by the sheriff or a deputy sheriff to execute process of a court;

"summary conviction offence" means any offence punishable by a magistrate's court on summary conviction, and includes any matter in respect of which a magistrate's court can make an order in the exercise of its summary jurisdiction;

"summary court" means unless the same is expressly or by necessary implication qualified-

(a) a Judge of the High Court when sitting in court and presiding over a summary trial, and

(b) any magistrate when sitting in open court to hear and determine any matters within his power and jurisdiction either under the provisions of this Act or any other written law,

and such Judge when so sitting and presiding and such magistrate when so sitting as aforesaid shall be deemed to be a "court" or "summary court" within the meaning of this Act;

"summary trial" means any trial by a magistrate and a trial by a Judge in which the accused has not been committed for trial after a preliminary inquiry;

superior police officer" has the same meaning as in the Police Act;

"whip" means a whip of a pattern approved by the Minister charged with responsibility for prisons;

"young person" means a person who has attained the age of fourteen and has not attained the age of seventeen years.

(2) Nothing in Chapters 1 to 11 inclusive of this Act shall be construed to authorise-

(a) the service outside the State of a summons to enforce the appearance before a court of an accused person, surety, or parent of an accused person;

(b) the service outside the State of a subpoena, summons or notice of hearing to compel the attendance of a witness before a court;

(c) the execution outside the State of a warrant for the arrest of any person or of a search warrant;

(d) the issue of an order to compel the production of any person confined in a prison outside the State;

(e) the execution outside the State of a warrant of distress; or

(f) the execution outside the State of a warrant of committal issued in accordance with section 392 of this Act.

Part 2
Arrest

Generally

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

4. A person arrested shall not be handcuffed, otherwise bound or be subjected to unnecessary restraint except by order of the court, a magistrate or justice of the peace or unless there is reasonable apprehension of violence or of an attempt to escape or unless the restraint is considered necessary for the safety of the person arrested.

5. Except when the person arrested is in the actual course of the commission of a crime or is pursued immediately after the commission of a crime or escape from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest.

6. (1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person, using such force as may be reasonably necessary for such purpose, and place in safe custody all articles other than necessary wearing apparel found upon him:

Provided that whenever the person arrested is admitted to bail and bail is furnished, such person shall not, subject to the provisions of subsection (6) of this section, be searched unless there are reasonable grounds for believing that he has about his person, any-

(a) stolen articles; or

(b) instruments of violence or poisonous substance; or

(c) tools connected with the kind of offence which he is alleged to have committed; or

(d) other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.

(2) Whenever it is necessary to cause a woman to be searched the search shall be made by another woman.

(3) Notwithstanding the other provisions of this section, any police officer or other person making an arrest may in any case take from the person arrested any offensive weapons which he has about his person.

(4) Where any property has been taken under this section from a person charged before a court of competent jurisdiction with any offence, a report shall be made by the police to such court of the fact of such property having been taken from the person charged and of the particulars of such property, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property or any portion thereof to be returned to the person charged or to such other person as he may direct.

(5) Where any property has been taken from a person under this section, and the person is not charged before any court but is released on the ground that there is no sufficient reason to believe that he has committed any offence, any property so taken from him shall be restored to him.

(6) When a person is in lawful custody upon a charge of committing any offence of such a nature and alleged to have been committed in such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence it shall be lawful for a qualified medical practitioner, acting at the request of a police officer, or if no such practitioner is procurable, then for such police officer, and for any person acting in good faith in aid and under the direction of such practitioner or police officer, as the case may be, to make such an examination of the person so in custody as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

7. (1) If any person or police officer acting under a warrant of arrest or otherwise having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities to search therein for the person sought to be arrested.

(2) If ingress to such place cannot be obtained under subsection (1) of this section, any such person or police officer may enter such place and search therein for the person to be arrested, and in order to effect an entrance into such place, may break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

8. Any police officer or other person authorised to make an arrest may break out of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

9. Any person who is arrested, whether with or without a warrant, shall be taken with all reasonable despatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release.

Arrest with Warrant and Procedure Thereon

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

(a) any person whom he suspects upon reasonable grounds of having committed an indictable offence against a Federal law or against the law of any State or against the law of any other State, unless the written law creating the offence provides that the offender cannot be arrested without a warrant;

(b) any person who commits any offence in his presence;

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

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

(e) any person whom he suspects upon reasonable grounds of being a deserter from any of the armed forces of Nigeria;

(f) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Nigeria which, if committed in Nigeria, would have been punishable as an offence, and for which he is, under any enactment in force in Nigeria, liable to be apprehended and detained in Nigeria;

(g) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(h) any person for whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in the State;

(I) any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself, and

(j) any person found in the State taking precautions to conceal his presence in circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence which is a felony or misdemeanour.

(2) The authority given to a police officer to arrest a person who commits an offence in his presence shall be exercisable in respect of offences committed in such officer's presence notwithstanding that the written law creating the offence provides that the offender cannot be arrested without a warrant.

(3) The powers conferred by this section upon a police officer shall be exercisable within a State by a member of the police force.

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

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

Provided that if such person is not resident in Nigeria the recognisance shall be secured by a surety or sureties resident in Nigeria.

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

12. Any private person may arrest any person in a State who in his view commits an indictable offence, or whom he reasonably suspects of having committed an offence which is a felony or of having committed by night an offence which is a misdemeanour.

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

14. (1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of subsection (1) of section 10 of this Act, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed an indictable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 11 of this Act; and if there is no sufficient reason to believe that he has committed any offence he shall be at once released.

15. When any offence is committed in the presence of a judge or magistrate within the division or district in which such judge is sitting or to which such magistrate is assigned such judge or magistrate may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

16. (1) Within the district to which he is assigned any magistrate may arrest or direct the arrest in his presence of any person whose arrest upon a warrant he could have lawfully ordered if the facts known to him at the time of making or directing the arrest had been stated before him on oath by some other person.

(2) Where a person is arrested in accordance with the provisions of either section 15 or 16 of this Act, the judge or magistrate making or directing the making of such arrest may deal with the person so arrested in the same manner as if such last named person had been brought before him by or under the directions of any other person.

Bail on Arrest without Warrant

17. When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, any officer in charge of a police station may, in any case, and shall, if it will not be practicable to bring such person before a magistrate or justice of the peace having jurisdiction with respect to the offence charged within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to such officer to be of a serious nature, discharge the person upon his entering into a

recognisance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognisance but where such person is retained in custody he shall be brought before a court or justice of the peace having jurisdiction with respect to the offence or empowered to deal with such person by section 484 of this Act as soon as practicable whether or not the police inquiries are completed.

18. If, on a person being so taken into custody as aforesaid, it appears to the officer aforesaid that the inquiry into the case cannot be completed forthwith, he may discharge the said person on his entering into a recognisance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognisance, unless he previously receives notice in writing from the officer of police in charge of that police station that his attendance is not required, and any such recognisance may be enforced as if it were a recognisance conditional for the appearance of the said person before a magistrate's court for the place in which the police station named in the recognisance is situate.

19. When any person has been taken into custody without a warrant, for an offence other than an offence punishable with death, the officer in charge of the police station or other place for the reception of arrested persons to which such person is brought shall, if after the inquiry is completed he is satisfied that there is no sufficient reason to believe that the person has committed any offence, forthwith release such person.

20. Officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations whether such persons have been admitted to bail or not.

Warrants of Arrest
General Authority to Issue

21. Where under any written law, whether passed before or after the commencement of this Act, there is power to arrest a person without warrant a warrant for his arrest may be issued.

Warrants, in General

22. (1)Every warrant of arrest issued under this Act or, unless the contrary is expressly provided, under any other written law shall bear the date of the day of issue, shall contain all necessary particulars and shall be signed by the Judge or magistrate by whom it is issued.

(2) Every such warrant shall state concisely the offence or matter for which it is issued and shall name or otherwise describe the person to be arrested, and it shall order the police officer or officers to whom it is directed to apprehend such person and bring him before the court to answer the complaint or statement, or to testify or otherwise according to the circumstances of the case, and to be further dealt with according to law.

23. No warrant of arrest shall be issued in the first instance in respect of any complaint or statement unless such complaint or statement be on oath either by the complainant himself or by a material witness.

24. A warrant of arrest may be issued on any day including a Sunday or public holiday.

25. (1)A warrant of arrest may be directed to a police officer by name or to all police officers

or to a police officer by name and to all police officers.

(2) it shall not be necessary to make any such warrant returnable at any particular time and a warrant shall remain in force until it is executed or until it is cancelled by a Judge or a magistrate, as the case may be.*

26. (Omitted as inapplicable as it relates to warrants directed to native authority police forces which has been abolished.)

27. (1) Any court issuing a warrant of arrest may, if its is immediate execution is necessary and no police officer immediately available, direct it to some other person or persons and such person or persons shall execute the same.

(2) Any such person, when executing a warrant of arrest directed to him, shall have all the powers, rights, privileges and protection given to or afforded by law to a police officer executing a warrant of arrest and shall conform with the requirements placed by law on such a police officer.*

Execution of, in General

(1) Every warrant of arrest may be executed on any day including a Sunday or public holiday.

(2) Every such warrant may be executed by any police officer at any time and in any place in the State other than within the actual court room in which a court is sitting.

(3) The person executing any such warrant shall, before making the arrest, inform to be arrested that there is a warrant for his apprehension unless there is reasonable cause for abstaining from giving such information on the ground that it is likely to occasion escape, resistance, or rescue.

(4) Every person arrested on any such warrant shall, Subject to the provisions of sections 30 and 31 of this Act be brought before the court which issued the warrant as soon as is practicable after he is so arrested.

29. A warrant of arrest may be executed notwithstanding that it is not in the possession at the time of the person executing the warrant but the warrant shall, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.

Bail by Order of Court on Execution of Warrant of Arrest

30. (1) Any court, on issuing a warrant for the arrest of any person in respect of any matter other than an offence punishable with death may, if it thinks fit by endorsement on the warrant, direct that the person named in the warrant be released on arrest on his entering into such a recognisance for his appearance as may be required in the endorsement.

(2) The endorsement shall specify-

(a) the number of sureties, if any;

(b) the amount in which they and the person named in the warrant are respectively to be bound;

(c) the court before which the person arrested is to attend; and

(d) the time at which he is to attend, including an undertaking to appear at a subsequent time as may be directed by any court before which he may appear.

(3) Where such an endorsement is made, the officer in charge of any police station to which on arrest the person named in the warrant is brought, shall discharge him upon his entering into a recognisance, with or without sureties approved by that officer, in accordance with the endorsement, conditioned for his appearance before the court and at the time and place named in the recognisance.

(4) Where security is taken under this section the officer who takes the recognisance shall cause it to be forwarded to the court before which the person named in the recognisance is bound to appear.

(5) The provisions of subsections (3) and (4) of this section shall not have effect with respect to a warrant executed outside the State.

Execution of Warrant out of Division or District in which Issued

31. (1) Where a warrant of arrest is executed in the State outside the division or district of the court by which it was issued, the person arrested shall, unless security is taken under section 30 of this Act, be taken before the court within the division or district in which the arrest was made.

(2) Such court shall if the person arrested, upon such inquiry as the court deems necessary, appears to be the person intended to be arrested by the court which issued the warrant, direct his removal in custody to such court:

Provided that if such person has been arrested in respect of any matter other than an offence punishable with death-

(a) and is ready and willing to give bail to the satisfaction of the court within the division or district of which he was arrested; or

(b) if a direction had been endorsed under section 30 of this Act on the warrant and such person is ready and willing to give the security required by such direction,

the court shall take bail or security, as the case may be, and shall forward the recognisance, if such be entered into, to the court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer taking security under section 30 of this Act.

Part 3
Escape and Retaking

32. If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may pursue and arrest him in any place in Nigeria.

33. The provisions of sections 7 and 8 of this Act shall apply to arrests under the last preceding section, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

34. Every person is bound to assist a judge or magistrate or police officer reasonably demanding his aid-

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

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

Part 4
Prevention of Offences

Security for Keeping the Peace and for Good Behaviour

35. (1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate may in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless-

(a) the person informed against is in the State; and

(b) such person is within the district to which the magistrate is assigned or the place where the breach of the peace or disturbance is apprehended is within the district to which the magistrate is assigned.

36. Whenever a magistrate is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

37. Whenever a magistrate is informed on oath that any person within the local limits of his jurisdiction-

(a) is by habit a robber, housebreaker, or thief, or (b) is by habit a receiver of stolen property, knowing the same to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen

property; or

(d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapter 34, 35, 36 or 41 of the Criminal Code; or

(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(f) is so desperate or dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit.

38. When a magistrate acting under section 35, 36 or 37 of this Act deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth-

(a) the substance of the information received;

(b) the amount of the recognisance to be executed;

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

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

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

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

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

41. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 38 of this Act, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

42. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to enter into a recognisance for keeping the peace, and may permit him to appear by a legal practitioner.

43. (1) When an order under section 38 of this Act has been read or explained under section

39 of this Act to a person in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 40 of this Act, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

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

(3) Pending the completion of the inquiry under subsection (1) of this Act, the magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 38 of this Act has been made to enter into a recognisance, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such recognisance is entered into or, in default of execution, until the inquiry is concluded:

Provided that-

(a) no person against whom proceedings are being taken under section 35 of this Act shall be directed to enter into a recognisance for maintaining good behaviour; and

(b) the conditions of such recognisance, whether as to the amount thereof or as to the provisions of sureties or the number thereof or the pecuniary extent of their liability shall not be more onerous than those specified in the order under section 38 of this Act; and

(c) no person shall be remanded in custody under the powers conferred by this section for a period exceeding fifteen days at a time.

(4) For the purposes of this section the fact that a person comes within the provisions of section 37 of this Act may be proved by evidence of general repute or otherwise.

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

44. (1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognisance, with or without sureties, the magistrate shall make an order accordingly:

Provided that-

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 38 of this Act;

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

(c) when the person in respect of whom the inquiry is made is a minor, the recognisance

shall be entered into as provided in section 121 of this Act.

(2) Any person ordered to give security for good behaviour under this section may appeal to the High Court whose decision shall be final.

45. If on an inquiry under section 43 of this Act it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognisance, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purpose of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Proceedings in all Cases Subsequent to Order to Furnish Security

46. (1) If any person in respect of whom an order requiring security is made under section 44 of this Act is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

47. The recognisance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counseling, or procuring the commission anywhere within the State at any time during the continuance of the recognisance of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognisance.

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

49. (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2) of this section, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(3) The High Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security in any

specified amount shall not exceed the term prescribed in respect of a like sum in the scale of imprisonment set forth in section 390 of this Act.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order and shall await the order of such court or magistrate.

50. Whenever a magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the order of the High Court, and such court may, if it thinks fit, order such person to be discharged.

51. The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognisance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

52. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to discharge any recognisance executed under any of the preceding sections within the district to which the magistrate is assigned.

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

(3) When such person appears or is brought before the magistrate, such magistrate after hearing such person may discharge the recognisance and in such event order such person to give, for the unexpired portion of the term of such recognisance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 47, 48, 49 and 50 of this Act be deemed to be an order under section 44 of this Act.

Part 5
Preventive Action of the Police

53. (1) Every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence.

(2) A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

54. Every police officer receiving information of a design to commit any offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

55. Notwithstanding the provisions of this or any other written law relating to arrest, a police officer knowing of a design to commit any offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.

Chapter 2.
Provisions Relating in General to all Criminal Trials and Inquiries

Part 6
Application and General

56. The provisions of this Chapter shall apply, save when express provision is made therein in respect of any particular court or form of trial, to all criminal trials, inquiries and other criminal proceedings in the High Court and magistrates' courts.

57. Every court has authority to cause to be brought before it any person who is within the jurisdiction and is charged with an offence committed within the State, or which according to law may be dealt with as if such offence had been committed within the jurisdiction and to deal with such person according to law.

Part 7

58. (Deleted by 1967 No. 5.)

Part 8
The Complainant, Form of Complaint and Time within which the Complaint must be made

59. (1) Any person may make a complaint against any other person alleged to have committed or to be committing an offence, unless it appears from the enactment on which the complaint is founded that any complaint for such offence shall be made only by a particular person or class of persons, in which case only the particular person or a person of the particular class may make such a complaint.

(2) Notwithstanding anything to the contrary contained in any enactment, a police officer may make a complaint in a case of assault even though the party aggrieved declines or refuses to make a complaint.

60. (1) It shall not be necessary that any complaint shall be in writing, unless it is required to be so by the enactment on which it is funded, or by some other enactment; and if a complaint is not made in writing, the court or registrar shall reduce it into writing.

(2) Subject to the provisions of section 23 of this Act, every complaint may unless some enactment otherwise requires, be made without oath.

(3) Every such complaint may be made by the complainant in person, or by a legal practitioner representing him, or by any person authorised in writing in that behalf, and shall be heard in private.

(4) Every such complaint shall be for one offence only, but such complaint shall not be avoided by describing the offence or any material act relating thereto in alternative words according to the language of the enactment constituting such offence.

61. Every complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before a court for an offence, shall be sufficient if it contains a statement of the specific offence with which the accused person is

charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

62. Any exception, exemption, proviso, condition, excuse, or qualification, whether it does or does not in any enactment creating an offence accompany in the same section the description of the offence, may be proved by the defendant, but need not be specified or negatived in the complaint, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the complainant.

63. In every case where no time is specially limited for making a complaint for a summary conviction offence in the enactment relating to such offence, such complaint if made other than by a person in his official capacity shall be made within six months from the time when the matter of such complaint arose, and not after.

Part 9
Place of Trial or Inquiry

Venue

64. Subject to the powers of transfer contained in the Act or Law constituting any court, the place for the trial or investigation of offences by such court shall be-

(a) an offence shall be tried or inquired into by a court having jurisdiction in the division or district where the offence was committed;

(b) when a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried or inquired into by a court having jurisdiction in the division or district in which any such thing has been done or omitted to be done, or any such consequence has ensued;

(c) when an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be tried or inquired into by a court having jurisdiction in the division or district either in which it happened, or in which the offence, with which it was so connected happened;

(d) (i) when it is uncertain in which of several divisions or districts an offence was committed; or

(ii) when an offence is committed partly in one division or district and partly in another; or

(iii) when an offence is a continuing one, and continues to be committed in more divisions or districts than one; or

(iv) when it consists of several acts committed in different divisions or districts,

it may be tried or inquired into by a court having jurisdiction in any of such divisions or districts;

(e) an offence committed while the offender is in the course of performing a journey or

voyage may be tried or inquired into by a court in or through or into the division or district of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage;

(f) an offence committed at sea or elsewhere out of Nigeria, which according to law may be tried or inquired into in Nigeria, may, subject to the provisions of section 58 of this Act, be so tried or inquired into at any place in Nigeria to which the accused person is first brought, or to which he may be taken thereafter.

64A. Where an offence against a Federal law-

(a) is begun in the State and completed in another State; or

(b) is completed in the State after being begun in another State,

the offender may be dealt with, tried and punished as if the offence had been actually or wholly committed in the State.

65. Whenever any doubt arises as to the magistrate's court in which any offence shall be inquired into or tried, a Judge shall, upon the application of a magistrate or the accused, decide in which magistrate's court the offence shall be inquired into or tried. Any such decision of a Judge shall be final and conclusive except that it shall be open to an accused person to show that no magistrate's court in the State has jurisdiction in the case.

66. The Chief Judge may, by order under his hand, direct that a preliminary inquiry shall be held by a magistrate into any criminal charge in respect of an offence subject to the jurisdiction of the High Court or committed by a person who is subject to the jurisdiction of the High Court but which is alleged to have been committed outside the limits of the magisterial district of such magistrate.

Remitting Magistrates

67. (1) A magistrate, in this and in the next succeeding section referred to as the remitting magistrate, before whom any person who is within the magisterial district of such magistrate and is charged with having committed an offence within the magisterial district of another magistrate is brought shall, unless himself authorised to proceed in the case, send him in custody to the court within the magisterial district in which the offence was committed, or require him to give security for his surrender to such last mentioned court, there to answer the charge and to be dealt with according to law.

(2) If such offence as is mentioned in subsection (1) of this section shall have been committed in a district within which one or more courts shall have concurrent jurisdiction, the remitting magistrate shall, unless himself authorised to proceed in the case, send the person charged in custody to such one of the courts having concurrent jurisdiction as can most conveniently deal with the case, or require him to give security for his surrender to such last mentioned court, there to answer the charge and to be dealt with according to law.

(3) The remitting magistrate shall send to the court to which the person charged is remitted for trial an authenticated copy of the information, summons, warrant, and all other process or documents in his possession, relative to such person.

68. Where any person is to be sent in custody, a warrant shall be issued by the remitting magistrate, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him and deliver him up to the court to which the person charged is remitted for preliminary inquiry or trial. The person to whom the warrant is directed shall execute it according to its tenor without any delay.

69. (1) If the defendant is in custody and the magistrate directing such transfer thinks it expedient that such custody should be continued, or, if he is not in custody, that he should be placed in custody, the magistrate shall, by his warrant, commit the defendant to prison until he can be taken before a magistrate of the district wherein the cause of complaint arose.

(2) The complaint and recognisance, if any, taken by such first named magistrate under the provisions of this Act shall be by him transmitted to the magistrate before whom the defendant is to be taken; and such complaint and recognisance, if any, shall be treated to all intents and purposes as if they had been taken by such last-mentioned magistrate.

(3) If the defendant is not retained or placed in custody as aforesaid, the magistrate shall inform him that he has directed the transfer of the case as aforesaid, and thereupon the provisions of the last preceding subsection relating to the transmission and use of the documents in the case shall apply.

Assumption of Jurisdiction

70. (1) Notwithstanding the provisions of sections 64, 65 and 67 of this Act, a judge or magistrate of a division or district in which a person is apprehended who is charged with an offence, alleged to have been committed in another division or district, may, if he considers that the ends of justice would be better served by hearing the charge against such person in the division or district in which he has been apprehended and having regard to the accessibility and convenience of the witnesses, proceed to hear the charge and the person charged may be proceeded against, tried and punished in any division or district in which he was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that division or district, and the offence shall, for all purposes incidental to or consequential on the prosecution, trial or punishment thereof, be deemed to have been committed in that division or district:

Provided that, if at any time during the course of any proceedings taken against any person before any court in pursuance of this subsection it appears to the court that the accused would suffer hardship if he were proceeded against and tried in the division or district aforesaid, the court shall forthwith, but without prejudice to a magistrate's powers under section 67 of this Act, cease to proceed further in the matter under this subsection.

(2) Where any person is charged with two or more offences, he may be proceeded against, tried and punished in respect of all those offences in any division or district in which he could be proceeded against, tried or punished in respect of any one of those offences, and all the offences with which that person is charged shall, for all purposes incidental to or consequential on the prosecution, trial or punishment thereof, be deemed to have been committed in that division or district.

71. In case any cause is commenced in any other division or district than that in which it ought to have been commenced, the judge or magistrate, as the case may be, may assume jurisdiction in accordance with the provisions of section 70 and all acts performed and all decisions given by the judge or magistrate during the trial or inquiry shall be deemed to be valid in all respects as if the jurisdiction had been assumed prior to the performance of the said acts and the giving of the said decisions.

Part 10
State Procedure

Powers of the Attorney-General

72. (1) Notwithstanding anything in this Act contained, the Attorney-General in each State may exhibit to the High Court informations for all purposes for which the Attorney-General for England may exhibit informations in the High Court of Justice in England.

(2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by the Attorney-General for England so far as the circumstances of the case and the practice and procedure of the High Court will admit.

Control of State in Criminal Proceedings

73. (1) In any criminal proceedings for an offence against a law of the State and at any stage thereof before judgment, the Attorney-General of the State may enter a nolle prosequi either by stating in court or informing the court in writing that the State intends that the proceedings shall not continue and thereupon the accused shall be at once discharged in respect of the charge or information for which the none prosequi is entered.

(2) If the accused has been committed to prison he shall be released, or if on bail the recognisance shall be discharged, and, where the accused is not before the court when such none prosequi is entered, the registrar or other proper officer of the court shall forthwith cause notice in writing of the entry of such none prosequi to be given to the officer in charge of the prison or other place in which the accused may be detained and such notice shall be sufficient authority to discharge the accused or if the accused be not in custody shall forthwith cause such notice in writing to be given to the accused and his sureties and shall in either case cause a similar notice in writing to be given to any witnesses bound over to prosecute.

(3) Where a none prosequi is entered in accordance with the provisions of this section, the discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

74. (1) In any inquiry with respect to an offence against a law of the State before a magistrate and at any stage before an order of committal is made, the Attorney-General of the State may enter a none prosequi by either stating in court or by informing the magistrate in writing that the State intends that the proceedings shall not continue and thereupon the accused shall be at once discharged in respect of the charge for which the none prosequi is entered.

(2) Where, following an inquiry before a magistrate, an accused person is committed for trial, the Attorney-General of the State may at any time after such committal and before the trial of

such accused person enter a none prosequi by informing, in writing, the court before which such accused has been committed for trial that the State intends that the proceedings shall not continue and thereupon the accused shall be at once discharged in respect of the charges for which the none prosequi is entered.

(3) Where a none prosequi is entered under this section, the provisions of subsection (2) of section 73 of this Act shall apply and the court shall cause the appropriate action to be taken.

(4) Where a none prosequi is entered in accordance with the provisions of this section, the discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

75. (1) In any trial or inquiry before a magistrate's court any prosecutor with the consent of the court, may, or on the withdrawals from a instruction of the Attorney-General of the State in the case of an offence against a law of the State shall, at any time before judgment is pronounced or an order of committal is made, withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged and upon such withdrawal-

(a) if it is made in the course of any inquiry the accused person shall be discharged in respect of such offence; or

(b) if it is made in the course of a trial-

(i) before the accused person is called upon to make his defence, he shall be discharged in respect of such offence; or

(ii) after the accused person is called upon to make his defence, he shall be acquitted in respect of such offence:

Provided that in any trial before a magistrate in which the prosecutor withdraws in respect of the prosecution of any offence before the accused is called upon to make his defence the magistrate may in his discretion order the accused to be acquitted if he is satisfied upon the merits of the case that such order is a proper one and when any such order of acquittal is made the magistrate shall endorse his reasons for making such order on the record.

(2) Where any private prosecutor withdraws from a prosecution for any offence under the provisions of this section the magistrate may, in his discretion, award costs against such prosecutor.

(3) A discharge of an accused person under this section shall not operate as a bar to subsequent proceedings against him on account of the same facts.

76. (Deleted by Legal Notice 65 of 1958.)

76A. (Inserted by Legal Notice 47 of 1955 and deleted by Legal Notice 65 of 1958.)

Part 11
Proceedings in General

Institution of Proceedings

77. Subject to the provisions of any other enactment, criminal proceedings may in accordance with the provisions of this Act be instituted-

(a) in magistrates' courts, on a complaint whether or not on oath, and

(b) in the High Court-

(i) by information of the Attorney-General of the State in accordance with the provisions of section 72 of this Act, and

(ii) by information filed in the court after the accused has been summarily committed for perjury by a Judge or magistrate under the provisions of Part 31 of this Act, and

(iii) by information filed in the court after the accused has been committed for trial by a magistrate under the provisions of Part 36 of this Act, and

(iv) on complaint whether on oath or not.

78. Where proceedings are instituted in a magistrate's court they may be instituted in either of the following ways-

(a) upon complaint to the court, whether or not on oath, that an offence has been committed by any person whose presence the magistrate has power to compel, and an application to such magistrate, in the manner hereinafter set forth for the issue of either a summons directed to, or a warrant of arrest to apprehend, such person; or

(b) by bringing a person arrested without a warrant before the court upon a charge contained in a charge sheet specifying the name and occupation of the person charged, the charge against him and the time and place where the offence is alleged to have been committed; and the charge sheet shall be signed by the police officer in charge of the case.

79. A magistrate may issue a summons or warrant as hereinafter provided to compel the appearance before him of any person accused of having committed in any place, whether within or without Nigeria, any offence triable in the State.

80. In every case the court may proceed either by way of summons to the defendant or by way of warrant for his apprehension in the first instance according to the nature and circumstances of the case.

81. (1) Subject to the provisions of section 59 of this Act any person who believes from a reasonable or probable cause, that an offence has been committed by any person whose, appearance a magistrate has power to compel may make a, complaint thereof to a magistrate who shall consider the allegations of the complainant and may, in his discretion, refuse to issue process recording his reasons for such refusal, or may issue a summons or warrant as he shall deem fit to compel the attendance of the accused person before a magistrate's court in the district.

(2) The magistrate shall not refuse to issue such summons or warrant only because the

alleged offence is one for which an offender may be arrested without warrant.

82. A summons may be issued or served on any day including a Sunday or public holiday.

Enforcing Appearance of Defendant

Issue of Summons

83. Where upon a complaint being made before a magistrate as provided in section 81 of this Act the magistrate decides to issue a summons in the first instance such magistrate shall issue a summons directed to the person complained against, stating concisely the substance of such complaint and requiring him to appear at a certain time and place being not less than forty-eight hours after the service of such summons before the court to answer to the said complaint and to be further dealt with according to law.

84. The court may, if it thinks fit and with the consent of the parties, hear and determine a complaint notwithstanding that the time within which the defendant was required to appear may not have elapsed.

85. Where upon a complaint being made before a magistrate as provided in section 81 of this Act the magistrate decides to issue a summons in the first instance the accused may be directed to appear forthwith in cases where an affidavit is made by the complainant either at the time of making the complaint or subsequently that such defendant is likely to leave the district within forty-eight hours.

86. Nothing contained in section 83, 84 or 85 of this Act shall oblige any magistrate to issue any such summons in any case where the application for an order may by law be made ex parte.

Form and Service of Summons

87. Every summons issued by a court under this Act shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the Chief Judge may from time to time prescribe.

88. Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant.

89. The person effecting service of a summons shall effect it by delivering it-

(a) if on an individual, to him personally; or

(b) if on a firm or corporation-

(i) to one of the partners, or

(ii) to a director, or

(iii) to the secretary, or

(iv) to the chief agent within the jurisdiction, or

(v) leaving the same at the principal place of business in Nigeria of the firm or corporation, or

(vi) to anyone having, at the time of service, control of the business or the firm or corporation;

(c) if on a local government council, then in accordance with the Local Government Law of the State.

90. If service in the manner provided by paragraph (a) of person section 89 of this Act cannot by the exercise of due diligence be effected the serving officer may with leave of the court affix one of the duplicates of the summons to some conspicuous part of the premises or place in which the individual to be served ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

91. Where the person summoned is in the service of government, the court issuing the summons may send it in duplicate to the head officer of the department in which such person is employed for the purpose of being served on such person, if it shall appear to the court that it may be most conveniently so served, and such head officer shall thereupon cause the summons to be served in the manner provided by paragraph (a) of section 89 of this Act and shall return the duplicate to the court under his signature, with the endorsement required by section 93 of this Act. Such signature shall be evidence of the service.

92. Where a court desires that a summons issued by it shall be served at any place outside the division or district in which it is issued the court shall send such summons in duplicate to a court within the division or district in which the person summoned resides or is to be there served.

93. (1) Where the officer who served a summons is not present at the hearing of the case, proof of such service, if within the division or district of the court issuing the summons, may be by endorsement on the duplicate of such summons and when service has been effected without the division or district of the issuing court proof of service shall be by affidavit made before a magistrate or other prescribed person and such endorsement and affidavit shall form part of the record.

(2) Such endorsement and affidavit shall show the manner in which such summons was served and in the case of an affidavit may be attached to the duplicate of the summons and returned to the issuing court.

94. Where a summons has been served upon the person to whom it is addressed or is delivered to any other person the person to whom it is addressed or the person to whom it is handed, as the case may be, shall sign a receipt therefor on the back of the duplicate. Where service is not effected by handing the summons to an individual but by some other method approved by this Act, the person effecting service shall endorse on the duplicate particulars of the method by which he has effected service.

95. Every person who is required to sign a receipt on the back of a duplicate summons to the effect that he has received the summons and fails to sign such receipt may be arrested by the person serving the summons and taken before the court which issued the summons and may

be detained in custody or committed in prison for such time not exceeding fourteen days as the court may think necessary.

Warrant Issued if Summons Disobeyed

96. If the court is satisfied that the accused has been served with a summons and the accused does not appear at the time and place appointed in and by the summons and his personal attendance has not been dispensed with under section 100 of this Act, the court may issue a warrant to apprehend him and cause him to be brought before such court.

Issue of Warrant of Arrest on Complaint on Oath

97. Where upon a complaint being made before a issue of magistrate as provided in section 23 of this Act such magistrate decides to issue a warrant in the first instance such magistrate shall issue a warrant to apprehend the person complained against and to bring him before the court to answer the said complaint and be dealt with according to law.

98. Where a warrant of arrest is issued in consequence of a complaint on oath as aforesaid the provisions of sections 22 to 31 of this Act shall apply to such warrant.

99. Notwithstanding the issue of a summons as in section 81 provided a warrant may be issued at any time before or after the time appointed for the appearance of the accused.

Dispensing with Presence of Accused

100. (1) Whenever a magistrate issues a summons in respect of any offence to which there is annexed a penalty not exceeding one hundred naira or imprisonment not exceeding six months or both such penalty and imprisonment, the magistrate may, on the application of the accused and if he sees reason to do so and shall, on such application when the offence with which the accused is charged is punishable only by a penalty not exceeding one hundred naira, dispense with the personal attendance of the accused provided that the accused pleads guilty in writing or appears and so pleads by a legal practitioner.

(2) The magistrate trying any case in which the presence of the accused has been dispensed with may, in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused and, if necessary, enforce such attendance by means of the issue of a warrant to apprehend the accused and bring him before the court.

(3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, the magistrate may at the same time provide either that if the fine be not paid within a stated time the amount shall be recovered by distress or that the accused shall be imprisoned for a period calculated in accordance with the provisions contained in section 390 for the non-payment of a fine.

(4) If, in any case in which under this section the attendance of an accused person is dispensed with, previous convictions are alleged against such person and are not admitted in writing or through such person's legal practitioner, the magistrate may adjourn the proceedings and direct the personal attendance of the accused and, if necessary, enforce such attendance in the same manner as in subsection (2) of this section.

(5) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required the cost of any adjournment for such purpose shall be borne in any event by the accused.

Part 12
Miscellaneous Provisions regarding Process

Irregularities

101. When any accused person is before a magistrate whether voluntarily, or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the preliminary inquiry or trial may be held notwithstanding any irregularity, illegality, defect, or error in the summons or warrant, or the issuing, service, or execution of the same, and notwithstanding the want of any complaint upon oath, and notwithstanding any defect in the complaint, or any irregularity or illegality in the arrest or custody of the accused person.

102. No variance between the charge contained in the summons or warrant and the offence alleged in the complaint, or between any of them and the evidence adduced on the part of the prosecution, shall affect the validity of any proceedings at or subsequent to the trial or preliminary inquiry.

103. A summons, warrant of any description or other process issued under any written law shall not be invalidated by reason of the person who signed the same dying, ceasing to hold office or have jurisdiction.

Saving of Validity of Process

104. The following provisions shall have effect in respect of warrants of commitment and warrants of distress-

(a) a warrant of commitment shall not be held void by reason only of any defect therein, if it is therein alleged that the offender has been convicted, or ordered to do or abstain from doing any act or thing required to be done or left undone, and there is a good and valid order to sustain the same;

(b) a warrant of distress shall not be held void by reason only of any defect therein, if it is therein alleged that an order has been made, and there is a good and valid order to sustain the same; and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason only of any defect in the warrant or of any irregularity in the execution of the warrant; but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress.

105. (1) In addition to the provisions of sections 25 to 27 of this Act in respect of warrants of arrest, all summonses, warrants of every description and process of whatever description shall be sufficiently addressed for service or execution by being directed to the sheriff.

(2) Notwithstanding the provisions of subsection (1) of this section, any such document may be addressed to a person by name or to an officer by his official designation.

(3) Where a warrant of arrest is addressed to the sheriff such warrant may be executed by any police officer or officer of a court.

106. The provisions contained in sections 22, 24 and 28 of this Act in respect of warrants of arrest, and the provisions contained in this Part relating to summonses, warrants of any description and other process and their issue, service, enforcement and execution shall, so far as may be, apply to every summons, warrant of any description and other process issued in respect of matters within the criminal jurisdiction of the court under any written law.

Part 13
Search Warrant

Issue and Execution

107. (1) Where a magistrate is satisfied by information upon oath and in writing that there is reasonable ground for believing that there is in the State in any building, ship, carriage, receptacle or place-

(a) anything upon or in respect of which any offence has been or is suspected to have been committed; or

(b) anything which there is reasonable ground for believing will afford evidence as to the commission of any offence; or

(c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any offence,

the magistrate may at any time issue a warrant, called a search warrant, authorising an officer of the court, member of the police force, or other person therein named-

(i) to search such building, ship, carriage, receptacle or place for any such thing, and to seize and carry such thing before the magistrate issuing the search warrant or some other magistrate to be dealt with according to law, and

(ii) to apprehend the occupier of the house or place where the thing was found if the magistrate thinks fit so to direct on the warrant.

(2) In this section and section 108 of this Act, "offence" includes an offence against a law of any other State of Nigeria which would be punishable in the State if it had been committed in that State.

108. If the occupier of any building or the person in whose possession any thing named in a search warrant is found is brought before a magistrate and complaint is not made that he has committed an offence, he shall forthwith be discharged by such magistrate.

109. (1) Every search warrant shall be under the hand of the magistrate issuing the same.

(2) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

110. A search warrant may be directed to one or more may be persons and when directed to more than one it executed by all or by any one or more of them. Time when search warrant may be issued and executed.

111. (1) A search warrant may be issued and executed on any day including a Sunday or public holiday. It shall be executed between the hours of five o'clock in the forenoon and eight o'clock at night but the court may, in its discretion, authorise by the warrant the execution of the warrant at any hour.

(2) Where a magistrate authorises the execution of a search warrant at any hour other than between the hours of five o'clock in the forenoon and eight o'clock at night such authorisation may be contained in the warrant at the time of issue or may be endorsed thereon by any magistrate at any time thereafter prior to its execution.

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

(2) If ingress into such building, thing or place cannot be so obtained the police officer or other person executing the search warrant may proceed in the manner prescribed by sections 7 and 8 of this Act.

(3) When any person in or about such building, thing or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If the person to be searched is a woman she shall if practicable be searched by another woman and may be taken to a police station for that purpose.

Detention and Disposal of Articles Seized

113. When upon the execution of a search warrant anything referred to in section 107 of this Act is seized and brought before any magistrate, he may detain or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the trial and if any person is committed for trial, or if any appeal is made, he may order it further to be detained in such manner and place and by such person as he may direct for the purpose of the trial or pending the hearing of the appeal. If no person is committed for trial or no appeal is made, the magistrate shall, except in the cases hereinafter mentioned, unless he is authorised or required by law to dispose of it otherwise, direct

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

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

114. Where anything seized under a search warrant and brought before a magistrate is of a perishable or noxious nature such thing may be disposed of forthwith in such manner as the court may direct.

115. If the thing to be searched for under a search warrant is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the powers and protection as are given by any written law for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the same manner as directed by any such written law, or, in default of such direction, as the Commissioner of Police of the State may either generally or in any particular instance order.

116. If, in consequence of the execution of a search warrant, there is brought before any magistrate any forged banknote, banknote paper, instrument, or other thing, the possession of which, in the absence of lawful excuse, is an indictable offence according to any enactment for the time being in force the judge, if such person is committed for trial, or, if there is no commitment for trial, the magistrate may cause such thing to be defaced or destroyed.

117. If, under any such warrant, there is brought before any magistrate any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an indictable offence according to any enactment for the time being in force, every such thing shall be delivered up to the Commissioner of Police of the State or to any person authorised by him to receive the same, as soon as it has been produced in evidence and is no longer required as such or as soon as it appears that it will not be required to be so produced:

Provided that a magistrate may in his discretion instead of so delivering up such coins or things order that they be destroyed in his presence.

117A. Where a search warrant is issued in respect of an offence against the law of any other State of Nigeria and a summons has been issued for that offence by, or any person has been charged with that offence before, a court of that State, the magistrate issuing the search warrant may unless he has disposed of the thing in accordance with section 1 14 of this Act, transmit anything seized and brought before him to that court and in relation to anything so transmitted the functions conferred upon a magistrate by sections 113, 114, 116 and 117 of this Act shall be exercised and performed by that court instead of by the magistrate who issued the search warrant.

Disposal of Certain Exhibits

117B. (1) For the purposes of this section and sections 117c,117D of this Act, a controlled substance is-

(a) a substance mentioned in Part A of the Second Schedule to the Food and Drugs Act; or

(b) a substance declared by the Minister by order in the Federal Gazette or by certificate under his hand to be a controlled substance for such purposes.

(2) An order or certificate made or given under subsection (1)(b) of this section shall not be invalidated by reason of the fact that-

(a) it has retrospective effect; or

(b) it relates to an exhibit produced in any criminal proceedings which were instituted or

concluded before the date when the order or certificate was made or given, or before the commencement of this section or of sections 117c, 117D of this Act.

117c. (1) Notwithstanding the provisions of any law to the contrary, where-

(a) criminal proceedings instituted for any alleged offence do not result in the conviction of the accused person; and

(b) any controlled substance has been produced to the court as an exhibit in the proceedings, the court, if the prosecutor makes application in that behalf, shall order the controlled substance to be confiscated.

(2) Where an order is made under this section in respect of any controlled substance, the controlled substance shall be handed over to the Nigeria Police and disposed of as the Minister may direct.

(3) Any person aggrieved by an order made under this section may within fifteen days of the making of the order appeal in writing -to the Minister, who may dispose of the appeal himself or refer it for disposal to any person or persons appearing to him to be suitable.

(4) The making of an order under this section shall not be affected by the fact that an appeal to a court having appellate jurisdiction has been or may be instituted in connection with the relevant proceedings, and no such jurisdiction shall include power to vary, cancel or otherwise affect the order.

117D. (1) An application may be made under section 117C of this Act in relation to any controlled substance notwithstanding that the relevant proceedings were concluded before the commencement of sections 117B and 117c of this Act, and on any such application the court shall make an order under the said section 117c of this Act accordingly unless at the time of the application the controlled substance in question is no longer in the control of the court.

(2) For the purposes of sections 117B and 117c of this Act-

"Minister" means the Minister charged with the responsibility for internal affairs.

Part 14
Provisions as to Bail and Recognisance Generally

118. (1) A person charged with any offence punishable with death shall not be admitted to bail, except by a judge of the High Court.

(2) Where a person is charged with any felony other than a felony punishable with death, the court may, if it thinks fit, admit him to bail.

(3) When a person is charged with any offence other than those referred to in the two last preceding subsections, the court shall admit him to bail, unless it sees good reason to the contrary.

119 Where any person is brought before a court on any process in respect of any matter not included within section 118 of this Act, such person may, in the discretion of the court, be

released upon his entering, in the manner hereinafter provided, into a recognisance conditioned for his appearing before such court or any other court at the time and place mentioned in the recognisance.

120. The amount of bail to be taken in any case shall be in the discretion of the court by whom the order for the taking of such bail is made, shall be fixed with due regard to the circumstances of the case and shall not be excessive.

121. Where in any case the person in respect of whom the court makes an order requiring that a recognisance be entered into is a minor, the minor shall not execute the recognisance but the court shall require a parent, legal guardian or other fit person, with or without sureties, to enter into a recognisance that the minor shall do what is required under the court's order.

122. An accused admitted to bail may be required to produce such surety or sureties as, in the opinion of the court admitting him to bail, will be sufficient to ensure his appearance as and when required and shall with him or them enter into a recognisance accordingly.

123. A judge of the High Court may, if he thinks fit, admit any person charged before a court in the State subject to the jurisdiction of the High Court to bail although the court before whom the charge is made has not thought fit to do so.

124. Where a magistrate, after a preliminary inquiry commits a person for trial and does not admit him to bail the magistrate shall inform the person so committed of his right to apply for bail to a Judge of the High Court.

125. Notwithstanding the provisions of sections 119 and 120 of this Act, a Judge of the High Court may in any case direct that any person in custody in the State be admitted to bail or that the bail required by a magistrate's court or police officer be reduced.

126. When as respects any recognisance the court has fixed the amount in which the sureties, if any, are to be bound, the recognisance need not be entered into before the said court, but may be entered into by the parties before any other court, or before any registrar, or before any superior officer of police or officer in charge of a police station, or where any of the parties is in a Government prison before the superintendent or other person in charge of such prison, and thereupon all the consequences of law shall ensue and the provisions of this Law with respect to recognisance before a court shall apply as if the recognisance had been entered into before the said court.

127. Where as a condition of the release of any person the is required to enter into a recognisance with sureties, the recognisance of the sureties may be taken separately and either before or after the recognisance of the principal, and if so taken the recognisance of the principal and sureties shall be as binding as if they had been taken together and at the same time.

128. Where a person is remanded on bail, the recognisance may be conditioned for his appearance at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

129. (1) Where the entering into of a recognisance is a condition of the release of any person, that person shall be released as soon as the recognisance has been entered into and if he is in prison or police custody, the court shall issue an order of release to the officer in charge of the prison or other place of detention and such officer on receipt of the order shall release him.

(2) Nothing in this section or in any other section relating to bail shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognisance was entered into or to which the bail relates.

130. If it is made to appear to any court by information on oath by a complainant, surety or other person that any person bound by recognisance to appear before any court or police officer is about to leave Nigeria, or, for the purpose of evading justice, is about to leave or has left the division or district of the court before which he is to appear or in which he normally resides, the court may cause him to be arrested and may commit him to prison until the trial or preliminary inquiry unless the court shall see fit to admit him to bail upon further recognisance.

131. Where an accused person has been admitted to bail and circumstances arise which, if the accused person had not been admitted to bail would, in the opinion of a law officer or police officer, justify the court in refusing bail or in requiring bail of greater amount, a judge or magistrate, as the case may be, may, on the circumstances being brought to his notice by a law officer or police officer, issue his warrant for the arrest of the accused person and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or admit him to bail for the same or an increased amount as the judge or magistrate may think just.

132. (1) Where an accused person who has been admitted to bail by a magistrate is indicated by a law officer for an offence which is not bailable by a magistrate, the magistrate shall, on being informed of the fact by any superior police officer, issue his warrant for the arrest of the accused person and commit him to prison in the same manner as if he had been originally committed for trial for the offence for which he is indicted.

(2) For the purposes of this section, a person shall be deemed to be indicted when the information against him has been filed in a High Court.

133. If at any time after a recognisance has been entered into it appears to the court that for any reason the surety or sureties are unsuitable, such court may issue a summons or warrant for the appearance of the principal, and upon his coming to the court may order him to execute a fresh recognisance with other surety or sureties, as the case may be.

134. (1) Any surety for the appearance of a person may at any time apply to the court to discharge the recognisance either wholly or so far as it applies to the applicant.

(2) On such application being made the court shall issue a warrant of arrest directing that the principal to the recognisance be brought before the court.

(3) On the appearance of such principal pursuant to the warrant, or on his voluntary surrender, the court shall direct the recognisance to be discharged either wholly or so far as it relates to the applicant or applicants and shall call upon the person previously bound to find

other sufficient surety or sureties and enter into a fresh recognisance and if he fails to do so may deal with him in the same manner as if he were a person who has failed to comply with an order to enter into a recognisance, with or without sureties, as the case may be.

135. When any surety to a recognisance becomes insolvent or dies or when any recognisance is forfeited under the provisions of section 137 of this Act, the court may order the person from whom such recognisance was demanded to furnish fresh security in accordance with the directions of the original order and, if such security is not furnished, such court may proceed as if there had been default in complying with such original order.

136. Where a surety to a recognisance dies before the recognisance is forfeited his estate shall be discharged from all liability in respect of the recognisance.

137. Where it is proved to the satisfaction of a court that a recognisance entered into under Chapters 1 to 11 inclusive of this Act has been forfeited the court shall record the facts and by order declare the recognisance to be forfeited.

138. The court may at any time cancel or mitigate the forfeiture, upon the person liable under the recognisance applying and giving security, to the satisfaction of the court, for the future performance of the condition of the recognisance and paying, or giving security for the payment of the costs incurred in respect of the forfeiture or upon such other conditions as the court may think just.

139. (1) Where a recognisance to keep the peace and to be of good behaviour or not to do or commit some act or thing, has been entered into by any person as principal or as surety before a court, a court may, upon proof of the conviction of the person bound as principal by such recognisance of any offence which is by law a breach of the condition of the same, by order, adjudge such recognisance to be forfeited and adjudge the persons bound thereby, whether as principal or as sureties or any of such persons to pay the sums for which they are respectively bound.

(2) A certified copy of the judgment of the court by which such person was convicted of such offence may be used as evidence in proceedings under this section and, if such certified copy is so used, the court shall presume such offence was committed by such person until the contrary is proved.

140. Where any recognisance is declared or adjudged to be forfeited, the court having jurisdiction over the matter of the complaint may, forthwith or at any time after such declaration, issue a warrant of commitment against any person liable, whether as principal or surety under such recognisance, for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set forth in section 390 of this Act, with or without hard labour, unless the amount due under such recognisance is sooner paid.

141. All sums paid or recovered in respect of any recognisance declared or adjudged by a court in pursuance of section 140 of this Act to be forfeited shall be paid to the proper officer of the court.

142. Any order of forfeiture made under section 137 or 139 of this Act shall be subject to appeal in the case of a]magistrate's order to the High Court and in the case of a judge's order to the Court of Appeal.

143. When any person who is bound by any recognisance entered into under this Act to appear before a court does not so appear, the officer presiding in such court may issue a warrant directing that such person be arrested and brought before him.

Part 15
Bringing before Court of Person in Custody

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

(2) The officer so in charge, 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.

Part 16
Forms in respect of Summons, Warrants, Recognisance and other similar Process

145. Subject to the express provisions, if any, of the rules, the forms contained in the First Schedule to this Act may, in accordance with any instructions contained in the said forms, and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply, and, when so used, shall be good and sufficient in law.

Part 17
Provisions relating to Property and Persons

Ownership of Property

146. Where in any complaint, summons, warrant of any description, charge sheet, information or any document whatsoever issued by a court in the exercise of its criminal jurisdiction it is necessary to refer to the ownership of any property whether movable or immovable which belongs to or is in the possession of more than one person the following provisions shall apply-

(a) if the property belonged to or was in the possession of more than one person whether as partners in trade or otherwise, joint tenants, tenants in common or other joint owners or possessors it may be described in the name of any one of such persons and another or others;

(b) property of a joint-stock company, company, association, club or society having a recognised manager, agent or secretary in Nigeria may, subject to the provisions of any other written law, be described as the property of such manager, agent or secretary without naming such manager, agent or secretary, or alternatively the property of any joint-stock company, company, association, club or society which has a legal or registered title may be declared as belonging to such joint-stock company, company, association, club or society by its legal or registered title;

(c) property belonging to or provided for the use of any public establishment, service or department may be described as the property of the State;

(d) where it is necessary to state the ownership of any church, chapel, mosque or building or place set apart for religious worship or of anything belonging to or being in the same, it may be stated that such church, chapel, mosque, or building or place, or such thing is the property of any clergyman, minister or other person officiating therein or of the churchwarden or church- wardens of such church, chapel or building or place, without its being necessary to name him or them;

(e) where it is necessary to state the ownership of any money or other property whatsoever in the charge, custody, or under the control of any public officer such money or property may be stated to be the money or property of the State;

(f) where it is necessary to state the ownership of any work or building made, erected or maintained either wholly or in part at the expense of the public revenue of Nigeria or of any part thereof or of any township, town, or village thereof or of any local government, or of anything belonging to or being in or used in relation to the same, or of anything provided for the use of any part or of any public institution or establishment, or of any materials or tools provided or used for repairing any such work or building or any public road or high-way, or of any other property whatsoever, whether movable or immovable as aforesaid, it shall be sufficient to state that such property is the property of the State or of the township, town, or village, or of any local government, as the case may be, without naming any of the inhabitants of any such areas or jurisdictions;

(g) property belonging to a woman who has contracted a marriage recognised as a valid monogamous marriage under English law or who has contracted a marriage under the Marriage Act may be stated as belonging to such married woman.

Description of Persons

147. Where in any complaint, summons, warrant of any description, charge sheet, information or any document whatsoever issued by a court in the exercise of its criminal jurisdiction it is necessary to refer to any person the description or designation of that person 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":

Provided that no person who is accused of an offence shall be described as "a person unknown" except in the case of a verdict found upon a coroner's inquisition.

Rights of Married Women in Respect of Separate Estate

148. Every woman who has contracted a marriage recognised as a valid monogamous marriage under English law or who has contracted a marriage under the Marriage Act shall have in her own name against all persons whatsoever, including the husband of such marriage, subject as regards her husband to the proviso hereinafter contained, the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if such property belonged to her as an unmarried woman:

Provided that any proceeding by one spouse against the other shall be governed by the provisions of section 36 of the Criminal Code Act.

149 In any proceedings taken under the provisions of section 148 of this Act the husband and wife shall be competent and compellable witnesses in accordance with the provisions of Part 9 of the Evidence Act.

Part 18
The Charge

Form of and Joinder of Offences and Persons

150. Charges may be as in the forms set out in the Second Schedule of this Act and may be modified in such respects as may be necessary to adapt them to the circumstances of each case.

151. (1) Every charge shall state the offence with which the accused is charged and if the written law creating the offence gives it any specific name the offence may be described in the charge by that name only.

(2) If the written law which creates the offence does not give it any specific name so much of the definition of the offence shall be stated as to give the accused notice of the matter with which he is charged.

(3) The written law and the section of the written law against which the offence is said to have been committed shall be set out in the charge.

(4) The fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(5) If the accused has previously been convicted of any offence and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may award, the subsequent offence shall first be charged and then, if the previous offence is one, which under the provisions of any written law, may be so charged a statement of such previous offence containing the fact, date and place of such previous conviction shall be added:

Provided that when the trial is had before a judge and jury or a judge with assessors the statement of such previous offence shall not be read out or charged save in accordance with the provisions of section 216 of this Act.

152. (1) The charge shall contain such particulars as to the time and place of the offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) Where the accused is charged with criminal breach of trust, fraudulent appropriation of property, fraudulent falsification of accounts or fraudulent conversion it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of

one offence within the meaning of section 156 of this Act.

(3) The particulars in the charge shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms.

(4) Where the nature of the offence is such that the particulars required by section 151 of this Act and subsections (1) to (3) of this section do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose.

153. (1) In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively in the written law creating such offence.

(2) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby.

154. (1) The description of property in a charge 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 that property are referred to in the charge the property may be described as being owned in accordance with the appropriate provision set out in section 146 of this Act.

(3) Coin and bank or currency notes may be described as money, and any averment as to any money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note, although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note shall not be proved, and in cases of stealing and defrauding by false pretences, by proof that the accused dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency 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.

(4) Where the ownership of any property is described under paragraph (b) of section 146 of this Act as being in any joint-stock company, company, association, club or society by its registered title, proof of the registration of the company, association, club or society shall not be required unless the court decides that such proof shall be given, in which case the further hearing may be adjourned for the purpose or the court may, in its discretion, amend the proceedings by substituting the name of some person or persons for such registered title.

(5) (a) Where a written law constituting an offence states the offence to be 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, omission, capacities, or intentions, or other matters stated in the alternative in the written law, may be stated in the alternative in the charge.

(b) It shall not be necessary in any charge where the offence is one constituted by a written law to negative any exception or exemption from or qualification to the operation of the written law creating the offence.

(6) The description or designation of the accused in a charge or of any other person to whom reference is made therein may be described in the manner set forth in section 147 of this Act.

(7) Where it is necessary to refer to any document or instrument in a charge, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

(8) Subject to any other provisions of this Act, 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 in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act, or omission referred to.

(9) It shall not be necessary in stating any intent to defraud deceive or injure to state an intent to defraud, deceive or injure any particular person, where the written law creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

155. When more persons than one are accused of the same offence or of different offences committed in the same transaction or when a person is accused of committing an offence and another of abetting or being accessory to or attempting to commit such offence or when a person is accused of any offence of theft, criminal misappropriation, criminal breach of trust and another of receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence, they may be charged and tried together or separately as the court thinks fit.

156. For every distinct offence with which any person is accused there shall be a separate charL3,e and every such charge shall be tried separately except in the cases mentioned in sections 157 to 161 of this Act.

157. (1) When a person is accused of more offences than one committed within the period of twelve months from the first to the last of such offences whether in respect of the same person or thing or not he may be charged with and tried at one trial for any number of them not exceeding three.

(2) Any offence shall be deemed to be an offence of the same kind as an attempt to commit such an offence where such attempt is itself an offence.

158. If in one series of acts or omissions so connected as to form the same transaction or which form or are together part of a series of offences of the same or a similar character more offences than one are committed by the same person charges for such offences, whether felonies, misdemeanours or simple offences, may be joined and the person accused tried therefor at one trial.

159. If the acts or omissions alleged constitute an offence failing within two or more separate

definitions in any written law for the time being in force under which offences are defined or punished the person accused of them may be charged with and tried at one trial for each of such offences.

160 If several acts or omissions, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence the person accused of them may be charged with and tried at one trial for the offence constituted by such acts or omissions when combined or for any offence constituted by any one or more of such acts.

161. If a single act or omission or series of acts or omissions is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.

Variations of Charge

162. When any person is arraigned for trial on an imperfect or erroneous charge the court may permit or direct the framing of a new charge or add to or otherwise alter the original charge.

163. Any court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the accused.

164. (1) If a new charge is framed or alteration made to a charge under the provisions of section 162 or section 163 this Act the court shall forthwith call upon the accused to plead thereto and to state whether he is ready to be tried on such charge or altered charge.

(2) If the accused declares that he is not ready, the court shall consider the reasons he may give and if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecutor in his conduct of the case, the court may proceed with the trial as if the new or altered charge had been the original charge.

(3) If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor the court may either direct a new trial or adjourn the trial for such period as the court may consider necessary.

(4) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge, and the charge shall be treated for the purpose of all proceedings in connection therewith as having been filed in the amended form.

165. When a charge is altered by the court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or re-summon any witness who may have been examined and examine or cross-examine such witness with reference to such alteration.

166. No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission.

167. Any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.

168. No judgment shall be stayed or reversed on the ground of any objection which if stated after the charge was read over to the accused or during the progress of the trial might have been amended by the court nor-

(a) because of any error committed in summoning or swearing the jury or assessors or any of them; nor

(b) because any person who has served upon the jury or as an assessor was not qualified to fit as a juror or assessor; nor

(c) because of any objection which might have been stated as a ground of challenge of any juror, nor for any informality in swearing a juror or witness or any of them; nor

(d) because of any variance between the charge or any process relating thereto and the evidence adduced in support of the charge as to the time at which the cause of complaint is alleged to have arisen if it is proved that such complaint was in fact made within the time, if any, limited by law for making the same; nor

(e) because of any variance between the charge or any process relating thereto and the evidence adduced in support of the charge as to the place in which the cause of complaint is alleged to have arisen; nor

(f) because of any alleged defect in substance or in form between any complaint, warrant or other process relating to the charge and the evidence adduced in respect of the charge.

Conviction of one of Several Offences and of Offences not Specifically Charged

169. Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence although the attempt is not separately charged.

170. Where a person is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence the accused person shall not be entitled to an acquittal but he may be convicted of the attempt and punished accordingly.

171. Where a person has been convicted of an attempt under either section 169 or 170 of this Act such person shall not subsequently be liable to be prosecuted for the offence for which he was convicted of attempting to commit.

171A. Where a person is charged with an offence and the evidence establishes that he became an accessory after the fact to that offence or to some other offence of which a person charged with the first-mentioned offence may be convicted by virtue of any of sections 169, 170 and 172 to 179 of this Act, he may be convicted as an accessory after the fact to that offence or that other offence, as the case may be, and be punished accordingly.

172. If upon the trial of any person for a misdemeanour or simple offence it shall appear that

the facts proved in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour or simple offence and no person tried for such misdemeanour or simple offence shall be liable to be afterwards prosecuted for felony on the same facts, unless the court shall think fit, in its discretion, to stop the trial and if it is a case tried with a jury to discharge the jury from giving any verdict and to direct such person to be indicted or charged for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanour or simple offence.

173. Where a person is charged with any of the following offences, that is to say-

(a) stealing any property, contrary to section 390 of the Criminal Code;

(b) obtaining or inducing the delivery of any property by a false pretence, and with intent to defraud, contrary to section 419 of the Criminal Code;

(c) obtaining or inducing the delivery or payment of any property or money by means of a fraudulent trick or device, contrary to section 421 of the Criminal Code;

(d) receiving any property obtained by means of an act constituting a felony or misdemeanour, contrary to section 427 of the Criminal Code Act,

and the evidence establishes the commission by him with respect to the same property of any other of those offences, he may be convicted of that other offence although he was not charged therewith.

174. (1) If on any trial for any of the offences mentioned in Chapter 37 of the Criminal Code Act the facts proved in evidence justify a conviction for some other of the said offences and not the offence wherewith the defendant is charged he may be found guilty of the said other offence and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offence.

(2) & (3) Deleted by 1966 No. 84.

175. If on any trial for rape or for defilement of a girl under conviction the age of thirteen years the facts proved in evidence under section authorised a conviction under section 221 of the Criminal Code or for an indecent assault and not the offence wherewith the accused is charged, he may be convicted of an offence under section 221 of the Criminal Code or of indecent assault, as the case may be, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offence or indecent assault.

176. If on any trial for an offence under section 221 of the Criminal Code the facts proved in evidence warrant a conviction for an indecent assault and not the offence wherewith the accused is charged the accused may be convicted of indecent assault although he was not charged with that offence.

177. Where upon the trial of any person for the murder of any child or for infanticide it appears upon the evidence that such person was not guilty of murder or of infanticide, as the case may be, but was guilty of the offence specified in section 329 of the Criminal Code, such person may be found guilty of that offence.

178. (1) Where upon the trial of a woman for the murder of her newly-born child it a pears upon the evidence that having regard to the provisions of section 327A of the Criminal Code she was not guilty of murder but was guilty of infanticide she may be found guilty of infanticide.

(2) Nothing in subsection (1) of this section shall prevent a woman who is tried for the murder of her newly-born child from-

(a) being convicted of manslaughter; or

(b) being found guilty of concealment of birth in pursuance of section 177 of this Act; or

(c) being acquitted upon the ground that by virtue of section 28 or 29 of the Criminal Code she was not criminally responsible, and being dealt with under section 230 of this Act.

179. (1) In addition to the provisions hereinbefore specifically made, whenever a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete lesser offence in itself and such combination is proved but the remaining particulars are not proved he may be convicted of such lesser offence or may plead guilty thereto although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence he may be convicted of the lesser offence although he was not charged with it.

Withdrawal of Remaining Charges

180. (1) When more charges than one are made against a person and a conviction has been had on one or more of them the prosecutor may, with the consent of the court, withdraw the remaining charge or charges or the court, of its own motion, may stay the trial of such charge or charges.

(2) Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction which has been had is set aside in which case subject to any order of the court setting aside such conviction, the court before which the withdrawal was made may, on the request of the prosecutor, proceed upon the charge or charges so withdrawn.

Part 19
Previous Acquittals or Convictions

180A. In this Part of this Act, "offence" includes an offence against the law of any other State of Nigeria.

181. (1) Without prejudice to section 171 of this Act, a person charged with an offence (in this section referred to as "the offence charged") shall not be liable to be tried therefor if it is shown-

(a) that he has previously been convicted or acquitted of 1966 No. 84.the same offence by a competent court; or

(b) that he has previously been convicted or acquitted by a competent court on a charge on

which he might have been convicted of the offence charged; or

(c) that he has previously been convicted or acquitted by a competent court of an offence other than the offence charged, being an offence of which, apart from this section, he might be convicted by virtue of being charged with the offence charged.

(2) Nothing in subsection (1) of this section shall prejudice the operation of any law giving power to any court, on an appeal, to set aside a verdict or finding of any other court and order a re-trial.

182. A person acquitted or convicted of any offence may afterwards be tried for any distinct offence for which a separate charge might have been made against him on the previous trial under the provisions of section 158 of this Act.

183. A person acquitted or convicted of any offence constituted by any act or omission causing consequences which together with such act or omission constitute a different offence from that for which he was acquitted or convicted may afterwards be tried for such last mentioned offence if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted when such consequences create the offence of murder or manslaughter.

184. A person acquitted or convicted of any offence constituted by an act or omission may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for the same or any other offence constituted by the same acts or omissions if the court by which he was first tried was not competent to try the offence with which he was first charged.

185. (Deleted by 1966 No. 84.)

Part 20
Witnesses

Enforcing Attendance of Witnesses

186. (1) If the court is satisfied that any person is likely to give material evidence for the prosecution or the defence the court may issue a summons for such person requiring him to attend, at a time and place to be mentioned therein, before the court to give evidence respecting the case and to bring with him any specified documents for things and any other documents or things relating thereto which may be in his possession or power or under his control.

(2) If the prosecutor is not a public officer the person to whom such summons is addressed shall not be bound to attend unless his traveling expenses are tendered to him.

187. Every such summons shall be served upon the person to whom it is directed in the same manner as is set out in section 89 or 91 of this Act or, with leave of the court, section 90 and the provisions of sections 92 to 95 of this Act shall apply to such summons.

188. If the person to whom any such summons is directed does not attend before the court at the time and place mentioned therein, and there does not appear to the court on inquiry to

be any reasonable excuse for such non-attendance, then, after proof to the satisfaction of the court that the summons was duly served or that the person to whom the summons is directed wilfully avoids service, the court, on being satisfied that such person is likely to give material evidence, may issue a warrant to apprehend him and to bring him, at a time and place to be mentioned in the warrant, before the court in order to testify as aforesaid.

189. If the court is satisfied in the first instance, by proof Upon oath, that any person likely to give material evidence, either for the prosecution or for the defence, will not attend to give evidence without being compelled so to do, then, instead of issuing a summons, it may issue a warrant in the first instance for the apprehension of such person.

190. (1) Every witness arrested under a warrant issued in the first instance shall, if practicable and the hearing of the case for which his evidence is required is appointed for a time which is more than twenty-four hours after the arrest, be taken before a magistrate, and the magistrate may, on his furnishing security by recognisance to the satisfaction of the magistrate for his appearance at such hearing, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such hearing.

(2) The provisions of sections 30 and 31 of this Act relating to bail of accused persons and of sections 106 and 144 of this Act shall apply to witnesses.

(3) A witness arrested or detained under this section shall not be kept in the same room or place as the defendant, if the defendant is in custody:

Provided that non-compliance with this subsection shall not vitiate any proceedings.

191. Any witness who-

(a) refuses or neglects, without reasonable cause, to attend at a court in compliance with the requirements of a summons duly served in the manner prescribed by law; or

(b) departs from the precincts of the court without the leave of the judge or magistrate holding the same,

shall be liable, on summary conviction, to a penalty not exceeding forty naira, or to imprisonment for any term not exceeding two months:

Provided that no complaint shall be made for any offence under this section except by the order of the court made during the hearing of the case for which the evidence of the witness is required.

192 Every witness who is present when the hearing or further hearing of a case is adjourned, or who has been notified of the time and place to which such hearing or further hearing is so adjourned, shall be bound to attend at such time and place, and, in default of so doing, may be dealt with in the same manner as if he had refused or neglected to attend before the court in obedience to a summons to attend and give evidence.

193. Any person present in court and compellable as a witness, whether a party or not in a cause, may be compelled by the court to give evidence, and produce any document in his possession, or in his power, in the same manner and subject to the same rules as if he had

been summoned to attend, and give evidence, or to produce such document and may be punished in like manner for any refusal to obey the order of the court.

Refractory Witnesses

194. (1) When any person attending either in obedience to a summons or after notification as in section 193 of this Act or by virtue of a warrant or being present in court and being verbally required by the court to give evidence in any case-

(a) refuses to be sworn as a witness; or

(b) having been so sworn, refuses to answer any question put to him by the sanction of the court; or

(c) refuses or neglects to produce any documents which he is required by the court to produce,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may, if it thinks fit, adjourn the hearing of the case for any period not exceeding eight days where practicable, and may in the meantime, by warrant, commit such person to prison or other place of safe custody, unless he sooner consents to do what is so 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 so required of him, the court may, if it thinks fit, again adjourn the hearing of 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 shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken by it.

Expenses of Witnesses

195. Where any person appears before the court on summons, recognisance or by virtue of a warrant to give evidence against any person accused of any offence the court may order payment, in accordance with the provisions of any rules of court, of the costs and expenses of such witness together with compensation for his trouble and loss of time.

196. The court may in its discretion, at the request of any person who appears before such court on summons, recognisance or by virtue of a warrant to give evidence on behalf of an accused person, order payment in accordance with the provisions of any rules of court to such witness of such sum of money as to the court seems reasonable and sufficient to compensate him for the expenses, trouble, and loss of time which he incurred or sustained in attending before the court.

197. In addition to any other power conferred on a Court the court may, if it considers it proper so to do on adjournment granted at the request of either or any party, direct that the amount payable to any witnesses in accordance with the provisions of this Act and any rules of court, or such sum not exceeding such amount aforesaid as the court may fix, shall be paid by

the party requesting the adjournment to such witnesses as may be present and whose evidence it has not been possible to take owing to the granting of the adjournment.

198. The amount of the expenses and compensation payable to any witness attending before the court shall ascertained by the registrar, certified under his hand and shall be paid out of general revenue to the witness by the Accountant-General of the Federation.

Examination of witnesses

199. Subject to the provisions of any other written law the examination of witnesses shall be in accordance with the provisions of Parts 9 and 10 of the Evidence Act.

200. The court at any stage of any trial, inquiry or other proceedings under this Act may call any person as a witness or recall and re-examine any person already examined and the court shall examine or recall and re-examine any such person if his evidence appears to the court to be essential to the just decision of the case.

201. Certificates signed by any of the officers named section 41 of the Evidence Act, shall be admissible in evidence in accordance with the provisions of sections 41 to 43 of the Evidence Act.

202. 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:

Provided that a law officer when appearing personally as counsel for the prosecution shall in all cases have the right of reply.

Part 21
Publicity and View

203. Subject to the provisions of sections 204 and 223 of this Act and of any other written law specifically relating thereto the room or place in which any trial is to take place under this Act shall be an open court to which the public generally may have access as far as it can conveniently contain them:

Provided that the judge or magistrate presiding over such trial may, in his discretion and subject to the provisions of section 205 of this Act, exclude the public at any stage of the hearing on the grounds of public policy, decency or expedience:

Provided further that where the court is sitting in a place other than in a building the authority given to exclude the public shall be construed as being authority to prevent the public approaching so near to where the court is sitting as, in the opinion of the judge or magistrate, to be able to hear what is taking place at the trial or be able to communicate with any person allowed to be present thereat.

204. In addition to and not in mitigation of any powers which a court may possess to hear proceedings in camera the court may, where a person who in the opinion of the court has not attained the age of seventeen is called as witness in any proceedings in relation to an offence against or any conduct contrary to decency or morality, direct that all or any persons not being

members or officers of the court or parties to the case, their legal practitioners or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of such person.

205. (1) An order made under either section 203 or 204 of this Act excluding the public from a court shall not unless specifically stated-

(a) authorise the exclusion of bonafide representatives of a newspaper or news agency; or

(b) apply to messengers, clerks and other persons required to attend at the said court for purposes connected with their employment.

(2) Where such an order is made the judge or magistrate, as the case may be, shall record the grounds upon which such decision is taken.

206. No infant, other than an infant in arms, or child shall be permitted to be present in court during the trial of any person charged with an offence or during any proceedings preliminary thereto and if so present, shall be ordered to be removed unless he is the person charged with the alleged offence or his presence is required as a witness or otherwise for the purposes of justice in which event he may remain for so long as his presence is necessary.

207. (1) Where it appears to the court that in the interest of justice the court should have a view of any place, person or thing connected with the case the court may, where the view relates to a place, either adjourn the court to that place and there continue the proceedings or adjourn the case and proceed to view the place, person or thing concerned.

(2) The accused shall be present at the view.

(3) In the case of any such view being had the court shall give such directions as may seem requisite for the purpose of preventing communication between the witnesses and the accused:

Provided that a breach of any such directions shall not affect the validity of the proceedings unless the court otherwise directs.

(4) If the trial is with assessors the assessors shall accompany the judge on the view.

Part 22
Determination of Age

208. Where a person is before any court and it appears to the court that such person is an infant, or a child, or a young person, or an adult, the court may make due inquiry as to the age of that person and for that purpose may take such evidence as may be forthcoming at the time, or at the time to which the inquiry may be adjourned but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of that person shall for the purposes of this Act be deemed to be the true age of that person.

209. Where in a charge for any offence, it is alleged that the person by or in respect of whom

the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or above the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to have been under or above that age, as the case may be, unless the contrary is proved.

Part 23
Presence of Parties and Conduct of Trials

210. Every accused person shall, subject to the provisions of section 100 and of subsection (2) of section 223 of this Act, be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable.

211. (1) Both the complainant and defendant shall be entitled to conduct their respective cases in person or by a legal practitioner.

(2) Where the defendant is in custody or on remand he shall be allowed the access of such legal practitioner at all reasonable times.

212. (Deleted by L.N. 47 of 1955.)

213. (1) Where any person other than the Attorney-General of the State prosecutes in any criminal proceedings for an offence against a law of the State on behalf of the State or any public officer prosecutes in his official capacity in any such criminal proceedings such person or public officer shall of prosecute such case subject to such general or specific directions as may be given by the Attorney-General of the State.

(2) Where proceedings in respect of any offence against a law of the State within the criminal jurisdiction of a court are brought by a police officer in the exercise of his official duty and it is not provided by any written law that such proceedings shall only be brought by or in the name of some specified person, such proceedings may, subject to any special or general directions given by the Attorney-General of the State, be brought in the name of the public officer, police officer instituting the proceedings or making the arrest if any, or in the case of a member of the police force in the name of the Commissioner of Police of the State.

(3) The provisions of subsections (1) and (2) of this section, shall apply in relation to proceedings for an offence against a Federal law as they apply in relation to offences against a law of the State but as if references to the Attorney-General of the State were references to the Attorney-General of the Federation.

(4) The Attorney-General of the Federation may delegate to the Attorney-General of the State the powers conferred upon him by this section either generally or with respect to any offence or class of offences.

214. Where an accused person appears before a court on a summons he may be required to enter the dock or to stand or sit adjacent thereto as may be ordered by the court.

Part 24

Recording of Plea

215. The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not be been duly served therewith.

216. (1) Where an accused person is charged with having previously been convicted he shall not when called upon to previous lead to the other charges or counts be required to plead to such charges unless he pleads guilty to the rest of the charges or counts on which he is to be tried or is found guilty on one or more of such charges or counts.

(2) Where the trial is with assessors, a charge or count of a previous conviction shall not be read out or charged until a verdict has been returned or a decision given in respect of the charge relating to the subsequent offence and if such verdict or decision is one of not guilty, he shall not be called upon to plead in respect of the previous conviction.

(3) Where a person may properly be called upon to plead to a charge or count of a previous conviction, he shall be asked if he has been previously convicted as charged or not and if he admits that he has been so previously convicted the court may find him guilty and proceed to sentence him but if he denies that he has been previously so convicted or stands mute of malice or does not answer directly to such question the court shall inquire concerning such previous conviction.

(4) A previous conviction may be proved in the manner set out in Part II of the Evidence Act or otherwise to the satisfaction of the court.

217. Every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial.

218. If the accused pleads guilty to any offence with which he is charged the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unless there shall appear sufficient cause to the contrary.

219. If the accused when called upon to plead to a charge or information for any offence can lawfully be convicted on such charge or information of some other offence not stated in such charge or information he may plead not guilty of the offence stated in the charge or information but guilty of such other offence and the court, if satisfied as in the last preceding section provided, shall record his admission as nearly as possible in the words used by him, and may in its discretion, convict the accused of the offence of which he has pleaded guilty and proceed as in the last preceding section provided, unless the prosecution states its desire to proceed with the trial of the accused for any offence stated in the charge or information.

220. If the accused person when called upon to plead shall stand mute of will not or cannot answer directly malice or when called upon to plead to the charge the court shall enter or cause to be entered 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, or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind in accordance with the provisions of Part 25 of this Act and if he shall be found to be of sound mind shall proceed with his trial.

221. (1) Any accused person against whom a charge or information is filed may plead-

(a) that by virtue of section 181 of this Act he is not liable to be tried for the offence with which he is charged; or

(b) that he has obtained a pardon for his offence.

(2) If either of such pleas is pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the charge or information.

(4) Nothing in this section shall prevent a person from pleading that by virtue of some other provision of law he is not liable to be prosecuted or tried for any offence with which he is charged.

Part 25
Persons of Unsound Mind

222. For the purposes of this Part of this Act, unless the context otherwise requires-

"asylum" includes a lunatic asylum, a mental or other hospital, a prison and any other suitable place of safe custody for medical observation;

"medical officer" means the medical officer attached to any asylum or any medical officer from whom a court requires an opinion.

223. (1) When a Judge holding a trial or a magistrate holding a trial or an inquiry has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence the Judge, jury or magistrate, as the case may be, shall in the first instance investigate the fact of such unsoundness of mind.

(2) Such investigation may be held in the absence of the accused person if the court is satisfied that owing to the state of the accused's mind it would be in the interests of the safety of the accused or of other persons or in the interests of public decency that he should be absent, and the court may receive as evidence a certificate in writing signed by a medical officer to the effect that such accused person is in his opinion of unsound mind and incapable of making his defence or is a proper person to be detained for observation in an asylum, or the court may, if it sees fit, take oral evidence from a medical officer on the state of mind of such accused person.

(3) If the Judge, jury or magistrate, as the case may be, is not satisfied that such person is capable of making his defence, the court shall postpone the trial or inquiry and shall discharge the jury, if any, and shall remand such person for a period not exceeding one month to be

detained for observation in an asylum.

(4) The medical officer shall keep such person under observation during the period of his remand and before the expiry of such period shall certify under his hand to the court his opinion as to the state of mind of such person, and if he is unable within the period to form any definite conclusions, shall so certify to the court and shall ask for a further remand. Such further remand may extend to a period of two months.

(5) Any court before which a person suspected to be of unsound mind is accused of any offence may, on the 19 application of a law officer, made at any stage of the proceedings prior to the trial, order that such person be sent to an asylum for observation; and the medical officer may, notwithstanding any other provision of law, detain any such accused person for such period, not exceeding one month, as may be necessary to enable him to form an opinion as to the state of mind of such person, and shall forward a copy of his opinion, in writing, to the court.

224. (1) If such medical officer shall certify that the accused person is of sound mind and capable of making his defence, the court shall, unless satisfied by the defence that the accused person is of unsound mind, proceed with the inquiry or trial, as the case may be.

(2) If such medical officer shall certify that such person is of unsound mind and incapable of making his defence, the judge or magistrate shall, if satisfied of the fact, find accordingly, and thereupon the inquiry or trial, as the case may be, shall be postponed; and if the judge or magistrate is satisfied that the accused person is of sound mind and capable of making his defence the court shall proceed with the trial or inquiry as the case may be.

(3) The trial of the issue as to whether or not the accused person is of unsound mind and incapable of making his defence shall, if the finding is that he is of sound mind and capable of making his defence, be deemed to be part of his trial before the court.

(4) The certificate of such medical officer shall be receivable as evidence under this section.

(5) If the accused person is certified to be of unsound mind and incapable of making his defence it shall not be necessary for him to be present in court during proceedings under this section.

225. (1) (a) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the court, the offence charged is bailable by the court, may, in its discretion, release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the court or such officer as the court appoints in that behalf.

(b) If such an accused person is before a magistrate charged with an offence which is bailable by a Judge but not by a magistrate or if the offence is bailable by a magistrate but the magistrate refuses to grant bail such magistrate shall inform the accused of his right to apply to a Judge for bail and report such fact to a Judge.

(2) If the offence charged is not bailable by the High Court or if a Judge has refused bail under paragraph (a) of subsection (1) of this section or after an application made under paragraph (b) thereof or if sufficient security is not given or if no application is made for bail

the Judge shall report the case to the Governor who after consideration of the report may, in his discretion, order the accused to be confined in a lunatic asylum or other suitable place of safe custody and the Judge shall give effect to such order.

(3) Pending the order of the Governor the accused, may be committed to prison or other suitable place of custody for safe custody.

226. Whenever an inquiry or trial is postponed under section 223 or 224 of this Act the court may at any time re-open the inquiry or commence the trial de novo and require the accused to appear or be brought before such court.

227. When the accused has been released under section 225 of this Act, the court may at any time require the accused to appear or be brought before it and may again proceed under section 223 of this Act.

228. When the accused appears to be of sound mind at the time of any preliminary inquiry before a magistrate and the magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence but is further satisfied from that evidence-

(a) that by virtue of section 28 of the Criminal Code (which relates to insanity) the accused was not criminally responsible for that act; or

(b) that the case falls under section 29(2) of the Criminal Code (which relates to intoxication as a defence) by virtue of paragraph (b) thereof (which relates to insanity resulting from intoxication),

the magistrate shall proceed with the case and, if the accused ought otherwise to be committed to the High Court, shall send him for trial.

229. Whenever any person is acquitted by virtue of the said section 28 or 29(2)(b) of the Criminal Code the verdict of the court before which the trial has been held or, in the case of a trial with a jury, of the jury shall state specifically whether he committed the act alleged or not.

230. (1) Whenever the finding states that the accused person committed the act alleged, the court before which the trial has been held shall, if such act would but for incapacity found have constituted an offence, order such person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the order of the Governor.

(2) The Governor may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody during the pleasure of the Governor.

231. When any person is confined under section 225 or 230 of this Act, the medical officer of the prison if such person is confined in a prison, or the medical officer attached to the asylum if he is confined in any asylum, shall keep him under observation in order to ascertain his state of mind and such medical officer shall make a special report for the information of the Governor as to the state of mind of such person at such time or times as the Governor shall require.

232. When any person is, under the provisions of section 225 of this Act, confined in a prison or asylum and is certified by the medical officer thereof to be capable of making his defence, such person shall be taken before the court at such time as the court appoints, and the court shall proceed with 'f the trial or inquiry, as the case may be, and the aforesaid certificate shall be receivable as evidence.

233. If the medical officer of a prison or the medical officer attached to an asylum in which a person is confined under section 225 or 230 of this Act shall certify that such person in his judgement may be discharged without danger of his doing injury to himself or to any other person, the Governor may thereupon order him to be discharged or to be detained in custody or in prison or to be transferred to an asylum if he has not already been sent to such an asylum, and in case he orders him to be transferred to such an asylum may require the Director of Medical Services of the State to appoint two medical officers to report on the state of mind of such person and upon any other facts the Governor may require and on receipt of such report the Governor may order his discharge or detention as he thinks fit.

234. Where a person is confined in a prison or an asylum the Governor may direct his transfer from one prison or asylum to any other prison or asylum as often as may be necessary.

235. (1) Whenever any relative or friend of any person confined under section 225 or 230 of this Act desires that such person shall be delivered over to his care and custody, the Governor, upon the application of such relative or friend and on his giving security to the satisfaction of the Governor that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may in his discretion order such person to be delivered to such relative or friend:

Provided that if such person is confined under the provisions of section 225 of this Act, the Governor may further require such relative or friend to give security to the satisfaction of the Governor that if at any time it shall appear to the Governor that such person is capable of making his defence, such relative or friend shall produce such person for trial.

(2) Whenever such person is so delivered to the care and custody of any person it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Governor directs.

(3) Sections 231 and 232 of this Act shall, mutatis mutandis, apply to persons delivered to the care and custody of persons under this section.

235A. Whenever it shall be necessary to remove a prisoner to a prison or asylum under the provisions of this Part of this Act, an order for such removal given under the provisions of this Part shall be sufficient authority for such removal and the detention of such prisoner notwithstanding that such prison or asylum is situate in another State of Nigeria.

Part 26
Remand

236. If during any proceedings before a court it becomes necessary to adjourn the hearing of the same, the court may from time to time adjourn such proceedings after or without hearing

the evidence, if it thinks fit, to a certain time and place, to be then appointed in the hearing of the parties or the legal practitioners representing them and if the defendant is in custody the court may admit him to bail, as in this Act provided, or by its warrant remand him to prison or other suitable place of security for any time not normally exceeding eight days but if necessary for such longer period as the court may consider advisable, and if such remand shall not be for longer than three clear days the court may order the person in whose custody the person remanded is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him again before the court at the time appointed for continuance of the case.

237. During remand the court may nevertheless order the accused to be brought before it.

238. If a court is satisfied that an accused person who has been remanded is, by reason of illness or accident, unable to appear personally before the court at such adjournment as in section 236 of this Act mentioned, such court may, in the absence of the accused person, order him to be further remanded for such time as may be deemed reasonable and cause him to be so informed in writing.

Place of Commitment

239. All persons committed to prison under this Act shall be committed to a Government prison or other place of safe custody.

Part 27
Addresses

Opening of Case for the Prosecution

240. After the accused person has pleaded not guilty to the charge or information the person appearing for the prosecution may open the case against the accused person and then adduce evidence in support of the charge.

Defence and Reply

241. After the case for the prosecution is concluded the accused or the legal practitioner representing him, if any, shall be entitled to address the court at the commencement or conclusion of his case, as he thinks fit, and if no witnesses have been called for the defence, other than the accused himself or witnesses solely as to the character of the accused and no document is put in as evidence for the defence, the person appearing for the prosecution shall not be entitled to address the court a second time but if in opening the case for the defence the person appearing for the accused has in addressing the court introduced new matter without supporting it by evidence the court, in its discretion, may allow the person appearing for the prosecution to reply.

242 If any witness, other than the accused himself or witnesses solely as to the character of the accused, is called or any document is put in as evidence for the defence, the person appearing for the accused shall be entitled after evidence on behalf of the accused has been adduced to address the court a second time on the whole case and the person appearing for the prosecution shall have a right of reply.

243 The provisions of sections 241 and 242 of this Act shall not affect the right of reply by a

law officer.

Part 27A
Procedure where Constitutional Questions are referred to Higher Court

243A. (1) Where any question as to the interpretation of the Constitution of the Federal Republic of Nigeria arises in the course of a trial and is referred to the Court of Appeal under the provisions of the said Constitution the court before which the question arose may in its discretion either-

(a) adjourn the trial until such question shall have been considered and decided; or

(b) conclude the trial and postpone the verdict until such time as the question has been considered and decided; or

(c) conclude the trial and pass sentence and respite execution thereof until such time as the question has been considered and decided, and in any such case the court in its discretion shall commit the person accused or convicted to prison or admit him to bail in accordance with Part 14 of this Act.

(2) When the question has been decided the court shall-

(a) continue the trial or discharge the accused; or (b) acquit or convict the accused; or

(c) order the execution of the sentence, as the circumstances may require.

Part 28
Conclusion of Trial

244. When the case for both sides is closed the court shall consider its verdict and for this purpose may adjourn the trial.

245. The Judge or magistrate shall record his judgment in writing and every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the Judge or magistrate at the time of pronouncing it:

Provided that in the case of a magistrate in lieu of writing such judgment it shall be sufficient compliance under this section if the magistrate-

(a) records briefly in the book his decision thereon and where necessary his reasons for such decision and delivers an oral judgment, or

(b) records such information in a prescribed form.

246. If the court finds the accused not guilty the accused shall forthwith be discharged and an order of acquittal recorded.

247. If the court convicts the accused person or if he pleads guilty, it shall be the duty of the registrar to ask the accused whether he has anything to say why sentence should not be

passed on him according to law but the omission of the registrar so to ask him or his being so asked by the Judge or magistrate instead of the registrar shall have no effect on the validity of the proceedings.

248. If the court finds the accused guilty the court shall either pass sentence on the accused or make an order or reserve judgment and adjourn the case to some future day.

249. (1) Where an accused person is found guilty of an offence the court may in passing sentence take into consideration any other charge then pending against the accused if the accused admits the other charge and desires that it be taken into consideration and if the prosecutor of the other charge consents.

(2) Where such a desire is expressed and consent given the court shall enter or cause an entry to that effect to be made on the record, and upon sentence being pronounced the accused shall not, subject to the provisions of sections 182 to 184 of this Act or unless the conviction which has been had is set aside, be liable to be charged or tried in respect of any such offence so taken into consideration.

250. When a person is convicted of any offence the court may, instead of passing sentence, discharge the offender upon his entering into his own recognisance, with or without sureties, in such sum as the court may think fit, conditioned that he shall appear and receive judgment at some future sitting of the court or when called upon.

251 Where a Judge or magistrate having tried a case is prevented by illness or other unavoidable cause from delivering his judgment or sentence, such judgment and the sentence, if the same has been reduced into writing and signed by the Judge or magistrate, may be delivered and pronounced in open court in the presence of the accused by any other Judge or magistrate.

Warrant of Commitment

252. Where a sentence or conviction does not order the payment of money but orders that the offender be imprisoned the court shall issue a warrant of commitment accordingly.

253. A warrant under the hand of the Judge or magistrate by whom any person shall have been sentenced or committed to prison for non-payment of a penalty or fine shall be full authority to the superintendent of any prison and to all other persons for carrying into effect the sentence described in such warrant not being a sentence of death.

Defect in Order or Warrant

254. The court may at any time amend any defect in substance or in form in any order or warrant of commitment and no omission or error as to time and place and no defect in form in any order or warrant of commitment given under this Act, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant if it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment sufficient to sustain the same.

Part 2
Costs, Compensation and Damages

255. (1) A court may order any person convicted before it of an offence to pay to the prosecutor in addition to any penalty imposed such reasonable costs as the court may seem fit.

(2) A court that acquits or discharges a person accused of an offence, if the prosecution of such offence was originally instituted on a summons or a warrant issued by a court on the complaint of a private prosecutor, may order such private prosecutor to pay to the accused such reasonable costs as the court may seem fit and the payment of such costs or any part thereof may be ordered by the court to be made out of any moneys taken from such person on his apprehension or may be recovered by distress.

(3) No order as to costs as aforesaid may be made if the court considers that the private prosecutor had reasonable grounds for making his complaint and the costs awarded shall not exceed one hundred naira in the case of an award by a Judge or fifty naira in the case of an award by a magistrate.

(4) Costs may be awarded under this section and may be in addition to any compensation awarded and accepted under section 256 of this Act.

(5) In this section, "private prosecutor" does not include any person prosecuting on behalf of the State, a public officer prosecuting in his official capacity or police officer.

256. If in any case before a court one or more persons is or are accused of any offence and the court by whom the case is heard discharges or acquits any or all of the accused and the Judge or magistrate presiding over the court is of opinion that the accusation against any or all of them was false and either frivolous or vexatious, the Judge or magistrate may for reasons to be recorded, direct that compensation, to such an amount not exceeding twenty naira as he may determine, be paid to the accused or to each or any of them by the person upon whose complaint the accused was or were charged.

257 Any sum so awarded as compensation shall be specified in the order of discharge or acquittal, as the case may be, and the court may order that on default of payment within such time as the court seems proper of any sum awarded for compensation, the person making default be imprisoned, with or without hard labour, for any term not exceeding the term prescribed in respect of a like sum in the scale of imprisonment set forth in section 390 of this Act.

258. The provisions of sections 255 and 256 of this Act shall be subject to any express provision made in any written law relating to the procedure to be followed in the awarding of costs or compensation in respect of conditions specified in such written law.

259. An appeal shall lie against any order awarding costs under section 255 of this Act, if made by a magistrate to the High Court and if made by a Judge to the Court of Appeal.

260. (1) The person to whom compensation is awarded may refuse to accept any such order for compensation but where any person received compensation for an injury under the award of the court as above mentioned, or where the offender, having been ordered to make compensation, suffers imprisonment for non-payment thereof, the receipt of such compensation or the undergoing of such imprisonment, as the case may be, shall be a bar to

any action for the same injury.

(2) Before making an order under subsection (1) of this section, the court shall explain the full effect of that subsection to the person to whom compensation would be payable.

Damages in Cases of Dishonesty

261. Where in a charge of stealing or receiving stolen property, the court shall be of opinion that the evidence is insufficient to support that charge, but that it establishes wrongful conversion or detention of property, the court may order that such property be restored, and may also award damages:

Provided that the value of such property and the amount of damages awarded shall not together amount in value to twenty naira.

262 The damages awarded under section 261 of this Act shall be recoverable in like manner as a penalty.

Part 30
Seizure, Restitution, Forfeiture and Disposition of

263. (1) During or at the conclusion of any trial or inquiry, the court may make such order as it thinks fit for the disposal whether by way of forfeiture, confiscation or otherwise of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where the court orders the forfeiture or confiscation of any property as provided in subsection (1) of this section but does not make an order for its destruction or for its delivery to any person the court may direct that the property shall be kept or sold and that the same or, if sold, the proceeds thereof, shall be held as it directs until some person establishes to the court's satisfaction a right thereto. If no person establishes such a right within six months from the date of forfeiture or confiscation such property or the proceeds thereof shall be paid into and form part of the general revenue.

(3) The power conferred by subsections (1) and (2) of this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was had or in any other written law applicable to the case.

(4) When an order is made under this section in a case in which an appeal lies such order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or when such appeal is entered until the disposal of such appeal.

263A. In this Part of this Act, the term "property" include, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same has been converted or exchanged and anything acquired by such

conversion or exchange, whether immediately or otherwise.

264. The 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 triable by the court and may direct the same to be forfeited, confiscated, held or otherwise dealt with in the same manner as property under section 263 of this Act.

265. (1) On a conviction under section 51, 58 or 232 of the Criminal Code, the court may order the confiscation and destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court and also all those which remain in the possession or power of the person convicted.

(2) The court may in like manner on a conviction for an offence under section 243 of the Criminal Code order the food or drink in respect of which the conviction was had and also all other unfit or adulterated food or drink which remain in the possession of power of the person convicted to be destroyed.

266. Where a magistrate is satisfied by information on oath that there is reasonable ground for believing that there is in the State in any building, ship, carriage, receptacle or place anything in respect of which an order may be made under section 264 or 265 of this Act, such magistrate may issue a search warrant to search for any such thing and if such thing be found the same shall be brought before any court and dealt with as the court may think proper.

267. (1) Whenever a person is convicted of an offence attended by criminal force and it appears to the court that by such force any person has been dispossessed of any immovable property the court may, if it thinks fit, order the possession of the same to be restored to such person.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person, including the person convicted, may be able to establish in a civil suit.

268. When any person is convicted of any offence which includes or amounts to stealing or receiving stolen property and it is proved that any other person has bought the stolen on property from him without knowing or having reason to believe that the same was stolen, and that any money has on the arrest of the convicted person been taken out of his possession, the court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser shall be delivered to him.

269. Where, upon the apprehension of a person charged with an offence, any property, other than that used in the commission of the offence, is taken from him, the court before which he is charged may order-

(a) that the property or a 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 costs or compensation directed to be paid by the person charged.

270. (1) Where any person is convicted of having stolen or having received stolen property, the court convicting him may order that such property or a part thereof be restored to the person who appears to it to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof then is, of any sum named in such order.

(2) This section shall not apply to-

(a) any valuable security which has been bonafide paid or discharged by any person liable to pay or discharge the same; or

(b) any negotiable instrument which shall have been bona fide received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen.

271. Where any person is charged with an offence relating to counterfeit coin and in that person's possession, actual or constructive, was found any counterfeit coin or any matter or thing intended to be used for the purpose of making counterfeit coins then, whether such charge proceeds to conviction or not, such coin or matter or thing shall not be returned to the person charged or to the person from whom the same was taken but shall be destroyed in such manner as the court may order and failing any such order the same shall be delivered by the court to any administrative officer or to any officer of the office of the Accountant-General of the Federation, not below the grade of an assistant accountant, or to a police officer not below the rank of superior police officer, to be destroyed in such manner as such officer may see fit.

272. Where any person comes into possession of any coin which he believes to be counterfeit or of any matter or thing which in his opinion is to be used for the purpose of making counterfeit coins he may hand such coin, matter or thing to any administrative officer, officer of the Central Bank of Nigeria designated by the Bank to receive the same, or to any police officer not below the rank of sub-inspector, and such administrative officer, officer of the Central Bank of Nigeria, or police officer-

(a) if satisfied that such coin is not counterfeit, or that any of such articles are not intended to be used for the purpose of making counterfeit coins, shall return the coin or such articles, as the case may be, to the person purporting to be the owner thereof, if known; and

(b) if satisfied that such coin is counterfeit or such matter or thing is intended to be used for the purpose of making counterfeit coins and if no charge is to be preferred against any person in connection with any such coin, matter or thing, may destroy or cause to be destroyed such coin, matter or thing in such manner and by such persons as may be approved by the Federal Minister of Finance and Economic Development:

Provided that-

(i) notice shall have been given to the person who appears to be the owner of such coin, matter or thing, if such person is known and can easily be found, that such coin, matter or thing will be destroyed at the end of a specified number of days unless such owner shows that the coin is not counterfeit or that the matter or thing is not intended to be used for the purpose of making counterfeit coin; and

(ii) a reasonable time was allowed such person for providing such proof as aforesaid,

and the person who alleges that he is the owner of or otherwise entitled to such coin, matter or thing shall have no claim against any such administrative officer, officer of the office of the Accountant-General of the Federation, police officer or the Government in respect of any such coin, matter or thing so destroyed.

272A. (1) Subject to the provisions of this section sections 271 and 272 of this Act shall apply in relation to notes purporting to be legal tender in Nigeria as those sections apply in relation to coins.

(2) No note, coin, matter or thing shall be destroyed by virtue of subsection (1) of this section unless either-

(a) a court orders its destruction, in connection with a conviction for an offence, in pursuance of section 271 of this Act as applied by subsection (1) of this section; or

(b) it appears to a magistrates' court having jurisdiction in the place where the note, coin, matter or thing is for the time being situated, on an application made in accordance with rules of court, that the existence of the note, coin, matter or thing involves a breach of the law and the court makes an order for its forfeiture and destruction accordingly; or

(c) in the absence of any conviction for an offence in respect thereof and any pending prosecution for such an offence, and of any order or pending application for an order for its forfeiture, the note, coin, matter or thing-

(i) has been voluntarily surrendered by the person having possession thereof to the proper official of the Central Bank of Nigeria or a superior police officer, or

(ii) is discovered in a lodgment made with the said bank by a commercial bank.

(3) The West African Currency Notes Act is hereby repealed.

273. Subject to the express provisions of any written law relating thereto, every article, not pecuniary, forfeited in respect of a summary conviction offence or the seizure, forfeiture or disposition of which may be enforced by the court may be sold or disposed of in such manner as the court may direct, and the proceeds of such sale shall be applied in the like manner as if the proceeds were a penalty imposed under the written law on which the proceeding for the forfeiture is founded.

Part 31
Summary Procedure in Perjury

274. (1) If it appears to a court that a person has been guilty of perjury in any proceeding before it, the court, subject to the provisions of subsection (2) of this section and in addition in the case of a magistrate to subsection (3) of this section, may-

(a) commit him for trial upon information of perjury and bind any person by recognisance to give evidence at his trial; or

(b) try him summarily as for a contempt of court and if he is found guilty commit him to prison for six months or fine him-

(i) if in the High Court, a sum of one hundred naira, and

(ii) if in the magistrate's court, a sum of fifty naira.

(2) Where a Judge or magistrate decides to try a person summarily under subsection (1) of this section, as for a contempt of court, such Judge or magistrate shall record in the evidence book the fact of such decision, shall specify the perjury alleged and shall direct the attention of the person to be charged to the inconsistencies upon which such charge is based and shall require him to give his explanation thereof and shall record such explanation in the book aforesaid.

(3) (a) If a magistrate orders a person to be imprisoned or to pay a fine under subsection (1) of this section, he shall neither issue his warrant of commitment nor make an order for imprisonment for non-payment of the fine but shall either remand such person or release him on a recognisance with or without sureties to come up before the court when called upon and shall forthwith forward to the Chief Judge or such Judge as the Chief Judge may direct a certified copy of the proceedings and the Chief Judge or Judge as aforesaid may without hearing argument and in the absence of the person concerned set aside or confirm such order or reduce the sentence of imprisonment or the amount of the fine and shall inform the magistrate as soon as practicable thereafter of his decision.

(b) If the Chief Judge or Judge does not wholly set aside the magistrate's order the magistrate shall forthwith issue his warrant of commitment or make the necessary order for payment of the fine in accordance with the terms of the Chief Judge or Judge's order.

(4) Any imprisonment or fine ordered or imposed under this section shall be a bar to any other proceedings for the same offence except where the order of a magistrate has been wholly set aside.

Chapter 3

Part 32
Trials Generally

275. (1)Trials shall be held- (a) in the High Court-

(i) on information, after committal for trial by a magistrate under Part 36 of this Act such information being filed by a law officer or private prosecutor in accordance with the provisions of Part 37 of this Act, or

(ii) on information, filed in the court after the accused has been summarily committed for trial by a Judge or magistrate under the provisions of Part 31 of this Act, or

(iii) on information exhibited by the Attorney- General of the State under the provisions of section 72 of this Act, or

(iv) summarily, in accordance with the provisions of Part 33, of this Act; and

(b) in magistrates' courts summarily in accordance with the provisions of Part 33 of this Act.

(2) When trials are being held with the aid of assessors the provisions of Part 48 of this Act relating thereto shall apply.

276. The Chief Judge may by rule direct that any offence or class of offence shall not be triable summarily by the High Court either throughout the whole of a State or in any specified part thereof.

Chapter 4

Part 33
Summary Trial

Application

277. The provisions of this Part of this Act shall apply to offences triable summarily, that is to say-

(a) to all trials in the High Court other than on information; and

(b) to all trials in the High Court in respect of offences for which it is provided that a trial can be had in the High Court otherwise than on information and for which no special procedure is provided; and

(c) to all trials in any magistrate's court to the extent of the jurisdiction of the magistrate adjudicating; and

(d) for all offences declared by any written law to be triable summarily or on summary conviction or in a summary manner or by a magistrate.

278. The provisions of this Act, other than those relating to the committal of an accused person to the High Court for trial on information therein, shall apply to trials under this Chapter save that where the provisions of this Chapter conflict with the provisions so applied the provisions of this Chapter shall prevail.

Hearing of Complaint

279. On the day and at the place mentioned in the summons or on the day and at the place on and to which the defendant is brought before the court under a warrant, as the case may be, the case with respect to which the complaint has been made shall be called for hearing in the court.

280 If, subject to the provisions of section 100 of this Act when the case is called the defendant appears voluntarily in obedience to the summons or is brought before the court under a warrant, and the complainant having, to the satisfaction of the court, had due notice of the time and place of hearing does not appear in person or in the manner authorised by any written law the court shall dismiss the complaint unless the court, having received a

reasonable excuse for the non-appearance of the complainant or his representative or for other sufficient reason, think fit to adjourn the hearing of the same to some future day upon such terms as the court may think just.

281.(1) If when a summons case is called the defendant of does not appear, or pleads guilty under the provisions section 100 of this Act, and no sufficient excuse is offered for his absence then the court, if satisfied that the summons, if any, has been duly served may issue a warrant, called a bench warrant, for his arrest or if not satisfied that the summons has been duly served or if a warrant had been issued, in the first instance, for the apprehension of the defendant the court may adjourn the hearing of the case to some future day, in order that proper service may be effected or until the defendant be apprehended as the case may be.

(2) If the defendant is afterwards apprehended on a bench warrant or other warrant as aforesaid, he shall be brought before the magistrate who shall thereupon commit him by warrant to prison or to such other place of safe custody as he may think fit, and order him to be brought at a certain time and place before the court; and of such time and place the complainant shall, by direction of the magistrate, be served with due notice.

282. (1) If, when the case is called neither the complainant nor the defendant appears, the court shall make such order as the justice of the case requires.

(2) In such order, the court may include such direction as to the payment of costs as to the court shall seem fit, and the payment of such costs may be enforced in the manner and subject to the conditions set forth in Part 43 of this Act as if it were a fine.

283. If, when the case is called both the complainant and the defendant appear, the court shall proceed to hear and determine the case.

284. If a complainant at any time before a final order is made in any case under this Chapter, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint the court may permit him to withdraw the same and shall thereupon acquit the accused unless the court directs that the accused instead of being acquitted shall be discharged.

285. (1) At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint, and shall ask him whether he is guilty or not guilty.

(2) If the defendant says that he is guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the court shall proceed to sentence.

(3) If the defendant says that he is not guilty the court shall direct that all witnesses shall leave the court and upon such direction, the provisions of section 186 of the Evidence Act shall apply:

Provided that the Judge or magistrate may in his discretion permit professional and technical witnesses to remain in court:

Provided further that failure to comply with the provisions of this subsection shall not

invalidate the proceedings.

(4) The court shall then proceed to hear the complainant and such witnesses as he may call and such other evidence as he may adduce in support of his complaint, and also to hear the defendant and such witnesses as he may call and such other evidence as he may adduce in his defence and also, if the court thinks fit, to hear such witnesses as the complainant may call in reply if the defendant has called any witnesses or given any evidence.

(5) The complainant and the defendant may put questions to each witness called by the other side and where the defendant gives evidence he may be cross-examined.

(6) If the defendant is not represented by a legal practitioner the court shall at the close of the examination of each witness for the prosecution ask the defendant whether he wishes to put any questions to that witness, and shall record his answer on the minutes.

286. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence the court shall, as to that particular charge, discharge him.

287. (1) At the close of the evidence in support of the charge, if it appears to the court that a prima facie case is made out against the defendant sufficiently to require him to make a defence the court shall call upon him for his defence and-

(a) if the defendant is not represented by a legal practitioner, the court shall inform him that he has three alternatives open to him, namely-

(i) he may make a statement, without being sworn, from the place where he then is; in which case he will not be liable to cross-examination; or

(ii) he may give evidence in the witness box, after being sworn as a witness; in which case he will be liable to cross-examination, or

(iii) he need say nothing at all, if he so wishes, and in addition the court shall ask him if he has any witnesses to examine or other evidence to adduce in his defence and the court shall then hear the defendant and his witnesses and other evidence, if any; and

(b) if the defendant is represented by a legal practitioner, the court shall call upon the legal practitioner to proceed with the defence.

(2) If the defendant or his legal practitioner states that he has witnesses to call but that they are not present, the court may, in the circumstances set forth in sections 186 to 193 of this Act, take the steps therein mentioned to compel their attendance.

288. Failure to comply with the requirements of paragraph (a) of section 287 of this Act shall not of itself vitiate the trial provided that the court called upon the defendant for his defence and asked him if he had any witnesses and heard the defendant and his witnesses and other evidence, if any.

289. If the defendant adduces in his defence new matter which the complainant could not foresee the complainant may, with the leave of the court, adduce evidence to rebut such first

mentioned evidence.

290. Whenever it appears to the court that any person who is so dangerously ill or hurt that there is a possibility he may not recover is able and willing to give material evidence relating to any offence triable summarily and it shall not be practicable to take the evidence in accordance with the provisions of this Act of the person so ill or hurt, such magistrate may take in writing the statement on oath or affirmation of such person and shall subscribe the same and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

291. The court shall cause reasonable notice of the intention to take the same and of the time and place where it is to be taken to be served upon the prosecutor and accused 3,ht by the and if the accused is in custody, he shall be brought, by the person in whose charge he is under an order in writing of the magistrate to the place where the statement is to be taken.

292. If the statement relates to an offence for which any person is subsequently committed for trial under Part 36 of this Act, it shall be transmitted to the court in which such person is to be tried and a certified copy shall be transmitted to a law officer.

293. (1) Such statement so taken may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates in accordance with the provisions of section 35 of the Evidence Act.

(2) The signature and attestation of the Judge or magistrate shall be sufficient prima facie proof of any statement, and that the same was taken in all respects according to law and such attestation and signature shall be admitted without further proof unless the court shall see reason to doubt the genuineness thereof.

294. (1) The court shall in every case take notes in writing of the oral evidence, or so much thereof as it considers is material, in a book to be kept for that purpose and such book shall be signed by the Judge or magistrate at the conclusion of each day's proceeding.

(2) No person shall be entitled, as of right, to inspection of or to a copy of the record so kept as aforesaid save as may be expressly provided for by the rules.

(3) The record so kept as aforesaid or a copy thereof purporting to be signed and certified as a true copy by the Judge or magistrate shall at all times, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses.

295. It shall be the duty of a court trying a case summarily to make or cause to be made such local inspection as the circumstances of the case may require.

296. Where a complaint is made by one or more parties against another party or parties and there is a cross-complaint by the defendant or defendants in such first named case either by himself or themselves or together with another person or persons against the complainant or complainants in the first named case either by himself or themselves or together with another person or persons and such cross-complaints are with reference to the same matter the court may, if it thinks fit, hear and determine such complaints at one and the same time.

297. Where two or more complaints are made by one or more parties against another party or parties and such complaints refer to the same matter, such complaints may, if the court thinks fit, be heard and determined at one and the same time.

298. If, in the course of the hearing, circumstances should appear which cause the court to be of the opinion that the offence, on account of its aggravated character or other sufficient reason, is not suitable to be disposed of by such court, then such court may, instead of adjudicating, commit the accused for trial before the High Court and shall follow the procedure in Part 36 of this Act, in relation to preliminary inquiries.

Making of order

299. Upon the conclusion of the hearing, the court shall either at the same or at an adjourned sitting give its decision on the case either by dismissing or convicting the accused and may make such other order as may seem just.

Binding Over

300. On any summary trial the court may, whether the complaint be dismissed or not, bind over the complainant or defendant, or both or any of them, with or without a surety or sureties, to be of good behaviour, and may order any person so bound, in default of compliance with the order, to be imprisoned for any term not exceeding three months, with or without hard labour, in addition to any other punishment to which such person is liable.

Dismissal and Acquittal

301. (1) Where a complaint is dismissed and such dismissal is stated to be on the merits such dismissal shall have the same effect as an acquittal.

(2) Where a complaint is dismissed and such dismissal is stated to be not on the merits or to be without prejudice such dismissal shall not have the same effect as an acquittal.

Part 34
Summary Trial by Magistrate of Child or Young Person charged with an Indictable Offence

302. (1) Where a child or young person is charged before a magistrate with any indictable offence, other than a capital offence, the magistrate, if he thinks it expedient so to do, may, subject to the extent of his jurisdiction and without consulting the parent or guardian, deal summarily with the offence and, in case of the child or young person being found guilty, inflict the same description of punishment as might have been inflicted if the case had been tried on indictment: Provided that in the case of a child-

(a) where a penalty is awarded, the amount shall not in any case exceed four naira;

(b) when the child is a male, the court may, either in addition to or in lieu of any other punishment order the child to undergo corporal punishment, or to be sent to a Government establishment or an institution, or to both undergo corporal punishment and be sent to a Government establishment or an institution;

(c) when the child is a female, the magistrate may, either in addition to or in lieu of any

other punishment, order the child to be sent to a Government establishment or an institution.

(2) For the purpose of proceedings under this section the magistrate shall, at any time during the hearing of the case at which it becomes satisfied by the evidence that it is expedient to deal with the case summarily cause the charge to be reduced into writing if this has not been already done.

(3) Nothing in this section shall be construed as authorising the trial of an infant.

303. Where a court orders a child or young person to undergo corporal punishment such punishment shall be carried out in accordance with the provisions of Part 42 of this Act relating to corporal punishment.

Part 35
Summary Trial by Magistrate of Adult charged with an Indictable Offence

304. (1) Where a person who is an adult is charged before a magistrate's court with any indictable offence other than a capital offence, the court may, subject to the extent of the jurisdiction of the magistrate adjudicating, deal summarily with the offence:

Provided that where the prosecution is conducted by a law officer the magistrate shall not deal with the case summarily without the consent of that law officer.

(2) If a magistrate at any time during the hearing of a charge for such an indictable offence as aforesaid against a person who is an adult becomes satisfied that it is expedient to deal with the case summarily, the magistrate shall thereupon, for the purpose of proceedings under this section, cause the charge to be reduced into writing, if this has not been already done, and read to the accused and shall address to him a question to the following effect-

"Do you desire to be tried by a judge of the High Court or with a jury, as the case may be, or do you consent to the case being dealt with summarily by this court?"

with a statement, if the magistrate thinks such a statement desirable, of the meaning of the case being dealt with summarily and of the sitting of the High Court at which he is likely to be tried, if committed for trial and, if the accused consents to be tried summarily, shall forthwith ask him the following question-

"Do you plead guilty or not guilty?"

(3) If the magistrate shall not inform the accused of his right to be tried by a judge of the High Court or with a jury, as the case may be, the trial shall be null and void ab initio unless the accused consents at any time before being called upon to make his defence to be tried summarily by a magistrate in which case the trial shall proceed as if the accused had consented to being tried summarily by a magistrate before the magistrate proceeded to hear evidence in the case.

(4) Any written law in force at the commencement of this Act which relates to the summary trial by a magistrate of indictable offences or which refers to indictable offences which are triable summarily by a magistrate shall, subject to the provisions of this section, be construed, as the case may be, as applying to summary trial by a magistrate of indictable offences under

this section or as referring to all indictable offences which are triable summarily by a magistrate thereunder.

305. (1) A magistrate, without prejudice to any other power which he may possess may, for the purposes of ascertaining whether it is expedient to deal with a case summarily, either before or during the hearing of the case, adjourn the case and remand the person charged.

(2) A person may be remanded under this section in like manner in all respects as a person accused of an indictable offence may be remanded.

306. A law officer in the case where any charge of an indictable offence is being proceeded with summarily by a magistrate under the provision of this Part of this Act may, at any time before the decision thereof, by order in writing under his hand, require such magistrate to deal with the same as one for trial on information and on receipt of such requisition the magistrate shall deal with such case accordingly.*

307. Where an adult charged with an indictable offence is being tried summarily by a magistrate, such magistrate shall, at the request of any person in charge of the prosecution made at any time before the decision in the case, adjourn the hearing of the charge in order that a law officer may be consulted with a view to obtaining an order as in the last immediately preceding section mentioned to have the case dealt with as one for trial on information.

308. Where an indictable offence is in the circumstances mentioned in this Part of this Act authorised to be dealt with summarily by a magistrate-

(a) the procedure shall, until the court assumes the power to deal with the offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were a summary conviction offence and not an indictable offence, and the other provisions of this Act shall apply accordingly:

Provided that nothing herein contained shall be construed to prevent the court from dealing thereafter with the offence as an indictable offence, if it thinks fit so to do;

(b) the evidence of any witness taken before the court assumed the power to deal with the offence summarily need not be taken again but every such witness shall, if the defendant so requires, be recalled for the purpose of cross-examination;

(c) the conviction for any such offence shall be of the same effect as a conviction on a trial on information for the offence;

(d) where the court has assumed the power to deal with the offence summarily and dismisses the complaint on the merits it shall, if required, deliver to the person charged a copy, certified under the hand of the magistrate, of the order of dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence.

309. Any person convicted of any indictable offence tried summarily may, instead of or in addition to any punishment to which he is liable, be ordered to enter into his own

recognisance, without or without sureties, in such amount as the court thinks fit that he shall keep the peace and be of good behaviour for a time to be fixed by the court and may be ordered to be imprisoned until such recognisance, with sureties if so directed, is entered into but so that the imprisonment for not entering into the recognisance shall not extend for a term longer than one year and shall not together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

Chapter 5

Part 36
Preliminary Inquiry by a magistrate into an Indictable Offence

Place of Inquiry not an Open Court

310. The room or place in which a preliminary inquiry is held or in which a statement under section 319 of this Act is taken is not an open or public court for that purpose, and the court may if it thinks that the ends of justice shall be best answered by so doing, order that no person have access to or be or remain in that room or place without the express permission of the court.

Local Inspection and Medical Examination

311. (1) It shall be the duty of a magistrate holding a preliminary inquiry-

(a) to make or cause to be made such local inspection as the circumstances of the case may require; and

(b) if necessary in any case of homicide or serious injury to the person, to cause the body of the person killed or, if he consents, of the person injured to be examined by a qualified medical practitioner, if any such can be had, and if not then, if the court considers it necessary, by the most competent person that can be obtained, and the deposition of such medical officer or other person shall afterwards, if necessary, be taken.

(2) Every qualified medical practitioner or other person as aforesaid who refuses or neglects, without reasonable excuse, to comply with any order or direction of a magistrate given under this section shall be liable, on summary conviction, to a penalty of two hundred naira.

312. Where under the provisions of this or any other Act, a magistrate holds a preliminary inquiry, the following provisions shall apply-

(a) when an accused person is before a magistrate the magistrate shall cause the substance of the complaint to be stated to the accused who shall not be required to make any reply thereto; if any such reply is made it shall not be recorded by the magistrate;

(b) the magistrate shall examine the witnesses for the prosecution apart from each other unless the magistrate thinks it is necessary or conducive to the ends of justice that any particular witness should be permitted or required to be present during the whole or any part of the examination of any other of the witnesses;

(c) the evidence of such witnesses shall be given in the presence of the accused and the accused shall be entitled to cross-examine them and shall be informed of such right if not represented by a legal practitioner;

(d) the evidence of every such witness shall be taken down in writing by the magistrate in the form of a deposition;

(e) such deposition shall be read over to the witness in the presence and hearing of the accused and shall be signed by the witness and the magistrate and by the interpreter, if any, or if the witness refuses to sign or is incapable of signing then by the magistrate and the magistrate shall as soon as practicable thereafter bind over the witness to attend the trial in manner hereinafter provided;

(f) any witness who refuses without reasonable excuse to sign his deposition may be committed by the magistrate holding the inquiry by warrant to prison or other place of safe custody there to be kept until after the trial or until the witness signs his deposition before a magistrate:

Provided that if the accused person is afterwards discharged, the magistrate may order any such witness to be discharged.

313. (1) The magistrate holding the preliminary inquiry shall bind over every witness for the prosecution whose deposition has been taken to attend to give evidence at the trial of the accused person before the High Court.

(2) Every witness so bound over shall enter into a recognizance and such recognizance shall specify the name and surname of the person entering into it, his occupation or profession, if any, and his address.

(3) Such recognizance may be either at the foot of the deposition or separate therefrom, and shall be acknowledged by the person entering into it, and be subscribed by the magistrate before whom it is acknowledged.

(4) Any witness who refuses, without reasonable excuse, to enter into such recognizance may be committed by the magistrate holding the inquiry by a warrant to prison or other place of safe custody, there to be kept until after the trial, or until the witness enters into such recognizance before a magistrate:

Provided that if the accused person is afterwards discharged, any magistrate may order any such witness to be discharged forthwith.

314. (1) If at the close of the evidence for the prosecution a prima facie case has in the opinion of the magistrate been established against the accused, immediately after the last witness for the prosecution has been bound over to attend the trial, the magistrate shall again read the charge or read the amended or substituted charge to the accused and explain the nature thereof to him in ordinary language and inform him that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf.

(2) After so doing the magistrate shall then address to him the following words or words to the like effect-

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial."

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

(4) (a) Whatever the accused then states in answer to the charge shall be taken down in full and shall be read over to the accused who shall be at full liberty to explain or add to his statement which shall be signed by the magistrate and also, if the accused so desires, by him and shall be transmitted to the court of trial with the depositions of the witnesses in manner hereinafter provided.

(b) On the trial the statement of the accused taken down as aforesaid, and whether signed by him or not may be given in evidence without further proof thereof unless it is proved that the magistrate purporting to sign the statement did not in fact sign it.

(5) (a) Immediately after complying with the requirements of this section relating to the statement of the accused and whether the accused has or has not made a statement the magistrate shall ask the accused whether he desires to give evidence on his own behalf or whether he desires to call witnesses.

(b) If the accused in answer to the question states that he wishes to give evidence but not to call witnesses the magistrate shall proceed to take forthwith the evidence of the accused, and after the conclusion of the evidence of the accused the legal practitioner, if any, appearing for the accused shall be heard on his behalf if he so desires.

(c) If the accused in answer to the question states that he desires to give evidence on his own behalf and to call witnesses or to call witnesses only the magistrate shall proceed to take either forthwith, or if an address is to be made by a legal practitioner on behalf of the accused after the conclusion of that address, the evidence of the accused, if he desires it give evidence himself, and of the witness called by him who knows anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused.

(d) All statements made by the accused shall be taken down in writing and all evidence given by him or any such witness as aforesaid under this subsection shall be taken down in writing in the form of a deposition and the provisions of paragraph (e) of section 312 of this Act relating to the reading over and signing of depositions of witnesses for the prosecution shall apply to such depositions and such statement and depositions shall be transmitted to the court of trial together with the other depositions of the witnesses for the prosecution.

315. 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 the witnesses is not due to any fault or neglect of the accused and that there is a likelihood that they could if present give material evidence on his behalf the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses.

316. (1) The magistrate holding the preliminary inquiry shall bind over every witness for the defence whose evidence is, in the opinion of the magistrate, material, to give evidence at the trial of the accused person before the court.

(2) Every witness so bound over shall enter into a recognizance and such recognizance shall be in the same form and contain the same matters so far as may be applicable as the recognizance entered into under section 313 of this Act.

317. Nothing contained in section 314 of this Act shall prevent the prosecutor in any case from giving in evidence at the trial any admission or confession or other statement of the accused made at any time which is by law admissible as evidence against the accused.

318. Notwithstanding anything contained in sections 312, 314, 315 and 319 of this Act, the magistrate may if he thinks fit and although the case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination.

319. (1) Where any person able to give material evidence in respect of an indictable offence in respect of which preliminary inquiry is proceeding is, from illness or injury, unable to attend at the place where the magistrate usually sits, any magistrate shall have power to take the deposition of such person at the place where such person is.

(2) The magistrate taking the deposition shall, where practicable, by an order in writing under his hand, cause reasonable notice to be served on the prosecutor and the accused, if not in custody, of his intention to take the same and of the time and place where it is to be taken; and if the accused is in custody, direct the officer in charge of the prison having the custody of the accused to cause him to be conveyed to the place where the examination is to be taken, for the purpose of being present when it is taken, and to be taken back to prison afterwards.

(3) The provisions of section 312 of this Act relating, subject to the provisions of section 310 of this Act, to the persons who may be present at the taking of the deposition, to cross-examination, to the taking down of the evidence and to the reading over and signing of the deposition shall, so far as the same are applicable, apply to depositions taken under this section.

(4) Every deposition taken under this section, if such deposition was taken by some other magistrate, shall be forwarded to the magistrate by whom the preliminary inquiry into such indictable offence is being or has been held and such deposition shall be treated in all respects in the same way and shall be considered for all purposes as a deposition taken upon the preliminary inquiry.

(5) In this section "magistrate" includes a magistrate of a court established for any other State.

320. Should the magistrate initiating the preliminary inquiry be unable for any sufficient reason to continue it after an adjournment it shall not be necessary for his successor to recommence such inquiry, unless it appears to him that the case is one on which he should adjudicate finally, but he shall read over aloud in the presence of the parties the depositions

already taken.

321. The magistrate taking depositions shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventoried and labeled, or otherwise marked, in the presence of the person producing the same, so that the same may be identified at the trial.

322. The signature of the magistrate shall be at the end of the deposition of each witness called for the prosecution and for the defence and at the end of any statement made by the accused in answer to the charge and shall thereby authenticate the deposition of the witness and the statement made by the accused.

323. The magistrate before determining whether he will or will not commit any accused person for trial, shall take into consideration his statement or any such evidence as is given by him or his witnesses.

324. Where there is a conflict of evidence, the magistrate shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt.

Discharge or Committal for Trial

325. (1) If the court considers that the evidence against the accused 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.

(2) If the accused is discharged any recognizance taken in respect of the charge shall then become void.

(3) Nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the investigation as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused may have been summoned or otherwise brought before the court, or which in the course of the charge so dismissed as aforesaid it may appear that the accused has committed.

326. If the magistrate considers the evidence sufficient to put the accused on his trial, he shall commit him for trial to the High Court and shall, until the trial, either admit him to bail or send him to prison for safe keeping; the warrant of the magistrate's court shall be sufficient authority to the person in charge of any prison appointed for the custody of prisoners committed for trial, although out of the district to which such magistrate is assigned.

327. When the accused appears to be of sound mind at the time of the preliminary enquiry, the court, 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 by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong and contrary to law, shall proceed with the case, and, if the accused ought to be committed for trial, the court shall so commit him.

328. If the accused, though not insane, cannot be made to understand the proceedings, the magistrate may proceed with the preliminary investigation; and if such investigation results in

a committal for trial, the proceedings shall be forwarded to the High Court with a report of the circumstances, and the High Court shall pass thereon such order as may deem necessary in the circumstance.

Conditional Binding over of Witnesses

329. (1) Notwithstanding the provisions of sections 313 and 316 of this Act, where any person charged before a magistrate with an indictable offence is committed for trial and it appears to the magistrate, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before him is unnecessary by reason of anything contained in any statement by the accused, or of the accused having pleaded guilty to the charge or of the evidence of the witness being merely of a formal nature the magistrate shall if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice being 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 court of trial 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 having13 of 1953. been, bound over conditionally to attend the trial, the prosecutor or the person committed for trial may give notice-

(a) at any time before the record of the preliminary inquiry is transmitted to the court of trial in accordance with the provisions of section 330 of this Act, to the registrar of the magistrate's court; and

(b) at any time thereafter to the registrar of the court of trial,

that he desires the witness to attend at the trial, and any such registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of the recognizance.

(3) The magistrate shall on committing the accused for trial inform him of his right to require the attendance at the trial of any such witness as aforesaid and of the steps which he must take for the purpose of enforcing such attendance.

(4) Where any person has been committed for trial for any offence, the deposition of a witness whose attendance at the trial is stated to be unnecessary in accordance with. the provisions of subsections (1), (2) and (3) this section may, if the conditions hereinafter set out are satisfied , without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence; the conditions hereinbefore referred to are the following-

(a) it must be proved at the trial, either by a certificate purporting to be signed by the magistrate before whom the deposition purports to have been taken or by the oath of a credible witness, that the deposition was taken in the presence of the accused and that the accused or a legal practitioner on his behalf had full opportunity of cross-examining the witness;

(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 subsection shall not have effect in any case in which it is proved-

(i) that the deposition, or, where the proof required by paragraph (a) of this subsection is given by means of a certificate, that the certificate, was not in fact signed by the magistrate by whom it purports to be signed, or

(ii) that the witness by whom the deposition was made has been duly notified that he is required to attend the trial.

Transmission of Depositions, Recognizances and Exhibits

330. The written charge, if any, the depositions, the statement of the accused, his answers recorded under subsection (5)(a) of section 314 of this Act, if any, the recognizances of the prosecutor and witnesses and the recognizances of bail, if any, and any documents and exhibits which have been put in evidence, shall be transmitted in proper time to the registrar of the court before which the trial is to be held; and an authenticated copy of the depositions and statement and answer aforesaid and where practicable of any documents which have been put in evidence shall be transmitted to a law officer, or to the Director of Public Prosecutions or a State counsel as may be most convenient.

331. A person who has been committed for trial shall be furnished free of charge, before the trial with a copy of the depositions and where practicable of any documents which have been put in evidence:

Provided that if the person committed states he does not require such copies it shall not be necessary to supply them.

Adjudication by Magistrate instead of Committal for Trial

332. If it shall appear to the magistrate in the course of preliminary inquiry that the offence is one which the court has jurisdiction to try summarily and is of such a nature that it can be suitably dealt with under the powers in criminal cases possessed by the court, he may, subject to the provisions of Parts 33 and 35 of this Act, hear and finally determine the matter, and either convict the accused or dismiss the charge:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all witnesses for the prosecution whom he had not already cross-examined or fully cross-examined.

Control of the State in Proceedings in which an Accused has been committed for Trial

333. (1) At any time after the receipt of the depositions and other documents mentioned in section 330 of this Act and before the indictment is filed, a law officer or State counsel may, if he thinks fit, refer back the case to the magistrate with directions to reopen the inquiry for the purpose of taking further evidence, and with such other directions as he thinks proper; if a

case is referred back as herein provided, the inquiry shall be reopened and the case shall be dealt with in all respects as if the accused person had not been committed for trial.

(2) Any directions given by a law officer or State counsel under this section shall be in writing signed by him, and shall be put into effect by the magistrate.

(3) The law officer or State counsel may at any time add to, alter or revoke any such directions.

(4) If, upon receipt of the depositions and other documents mentioned in section 330 of this Act, whether or not the inquiry has been reopened under this section, a law officer is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the law officer may, if he thinks fit, refer back the case to the magistrate with directions to deal with the same accordingly, and with such other directions as he may think proper.

(5) When a law officer or State counsel directs that an inquiry shall be reopened or where a law officer directs that a case shall be dealt with summarily, the following provisions shall have effect-

(a) if the accused is in custody the magistrate shall by an order in writing under his hand direct the officer in charge of the prison having the custody of such accused person to convey him or cause him to be conveyed to the place named in such order for the purpose of being dealt with as the magistrate may direct;

(b) if the accused person is on bail the magistrate shall issue a summons for his attendance at a time and place named in such summons and if the accused person does not attend in obedience to such summons the magistrate shall issue a warrant for his apprehension and in either event the proceedings shall thereafter be continued under the provisions of Parts 33 and 35 of this Act.

(6) The provisions of this section shall be in addition to and not in derogation of any other powers vested in the Attorney-General of the Federation or a State under the provisions of any written law.

Chapter 6
Proceedings after an Accused has been committed by a Magistrate to the High Court for Trial

Part 37

334. Where a trial is to take place in the High Court after preliminary inquiry and committal for trial to the High Court by a magistrate such trial shall, save as provided for in Part 38, be on information.

335. The President may by order direct that any offence or class of offences arising in any place or district specified in such order and charged against any person or class of persons as may also be specified in such order shall be tried with a jury and any person charged with an offence directed by any such order to be tried with a jury shall, subject to the provisions of section 336 of this Act, be so tried in accordance with the provisions of this Act.

336. Where a person is charged in one information with two or more offences one or more of which are triable with a jury and one or more by a Judge with or without assessors, the trial shall be with a jury unless the principal offence charged is triable without a jury and the Judge shall direct that the trial of all the charges shall be heard without a jury or that the offences triable with a jury shall be tried separately from the other offences.

Information

337. Every information shall bear date of the day when the same is signed and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form-

In the High Court of the State

The Judicial Division

The day of 19 .

At the sessions holden at on the day of ,19 , the court is informed by the Attorney-General on behalf of the State that C.D. is charged with the following offence [or offences].

338. (1) Where an information is exhibited to the High Court under the provisions of this Act-

(a) a description of the offence charged in such information or, where more than one offence is so charged, of each offence so charged, shall be set out in the information in a separate paragraph called a count;

(b) a count of an information shall commence with a statement of the offence charged, called the statement of offence;

(c) the statement of 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 essential elements of the offence, and, if the offence charged is one created by a written law, shall contain a reference to that written law;

(d) after the statement of offence, particulars of that offence shall be set out in ordinary language:

Provided that where any written law limits the particulars of an offence which are required to be given in an information nothing in this paragraph shall require any more particulars to be given than those so required;

(e) where an information contains more than one count, the counts shall be numbered consecutively.

(2) The forms set out in the Third Schedule to this Act hereto or forms conforming thereto as nearly as may be shall be used in the cases to which they are applicable and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the

circumstances of each case.

339. The provisions of sections 151 to 180 of this Act shall apply, mutatis mutandis, to counts of an information.

Proceedings Preliminary to Trial

340. (1) Subject to the provisions of this section an information charging any person with an indictable offence may be preferred by any person before the High Court charging any person with an indictable offence for which that person may lawfully be indicted, and wherever an information has been so preferred the registrar shall, if he is satisfied that the requirements of section 341 of this Act have been complied with, file the information and it shall thereupon be proceeded with accordingly:

Provided that if the registrar shall refuse to file an information, a Judge, if satisfied that the said requirements have been complied with, may, on the application of the prosecutor or on his own motion, direct the registrar to file the information and it shall be filed accordingly.

(2) Subject as hereinafter provided no information charging any person with an indictable offence shall be preferred unless the information is preferred pursuant to an order made under Part 31 of this Act to prosecute the person charged for perjury:

Provided that a charge of a previous conviction of an offence or of being an habitual criminal or of being an habitual drunkard may, notwithstanding that it was not included in any such direction as aforesaid, be included in the information.

(3) If an information preferred otherwise than in accordance with the provisions of the last foregoing subsection has been filed by the registrar the information shall be liable to be quashed:

Provided that-

(a) if the information contains several counts, and the said provisions have been complied with as respects one or more of them, those counts only that were wrongly included shall be quashed under this section; and

(b) where a person who has been committed for trial is convicted on any information or on any count of an information, that information or count shall not be quashed under this section in any proceedings on appeal, unless application was made at the trial that it should be so quashed.

341. (1) All informations shall, subject to the provisions of subsection (2) and section 342 of this Act, be signed by a law officer.

(2) Where the Governor shall for reasons of public convenience think fit, an information may be signed by any other public officer or person whom the Governor may designate.

342. The registrar shall receive an information from a private person if-

(a) it has endorsed thereon a certificate by a law officer to the effect that he has seen such information and declines to prosecute at the public instance the offence therein set forth; and

(b) such private person has entered into a recognizance in the sum of one hundred naira, together with one surety to be approved by the registrar in the like sum, to prosecute the said information to conclusion at the times at which the accused shall be required to appear and to pay such costs as may be ordered by the court, or, in lieu of entering into such recognizance shall have deposited one hundred naira in court to abide the same conditions.

343 Where any private person has complied with the provisions of section 342 of this Act the information shall be Signed by such person and not by a law officer, or other person designated by the Governor as aforesaid and such person shall be entitled to prosecute the information.

Venue

344. The place of trial shall be determined in accordance with the provisions of section 64 of this Act.

345. Notwithstanding the provisions of section 344 of this Act-

(a) where any cause is commenced in any other division than that in which it ought to have been commenced, it may, notwithstanding, be tried therein, unless the defendant shall object thereto at or before the time when he is called upon to plead or to state his answer in such cause; and

(b) either the prosecutor or the accused, whenever he considers that the ends of justice so require, in any case may apply to the court either to transfer the hearing from one division to another or from one part of one division to another part of the same division.

346. Where any case shall be transferred from one place in a division to another place in the same division or to another division such case shall be tried and determined at the place or in the division to which it has been so transferred; and all recognisance, subpoenas, and proceedings in or relating to the case shall thereupon be deemed to be returnable at such latter place or division and all witnesses who are bound by recognisance or summoned to attend the trial shall be informed accordingly and shall attend at such latter place or division.

Notice of Trial

347. The registrar or his deputy, or any other person directed by the court, shall endorse on, or annex to, every copy delivered to the sheriff or proper officer, for service thereof, a notice of trial, which notice shall specify the particular sessions at which the party is to be tried on the said information 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 information whereof this is a true copy, at the sessions to be held at on the day of , 19

348. The registrar or other proper officer shall deliver, or cause to be delivered, to the sheriff or proper officer serving the information, a copy thereof, with the notice of trial endorsed on the same or annexed thereto, and if there are more parties charged than one then as many

copies as there are parties, together with a similar notice for service on each witness bound to attend the trial.

349. (1) The sheriff or other proper officer aforesaid shall as soon as may be after having received a copy of the information and notice of trial, and three days at least before the day specified therein for trial, or within such lesser time as the court may for good cause order, by himself or his deputy or other officer, deliver to the party charged the said copy and notice and explain to him the nature thereof, and when the said party is not in custody or shall have been admitted to bail and cannot readily be found he shall leave a copy of the said information and notice of trial with some one of his household for him at his dwelling-house, or with some one of his bail, for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling-house of the party charged or of any of his bail:

Provided that nothing herein contained shall prevent any person in custody or awaiting trial at the opening of or during any sessions, from being tried thereat, if he shall have been served with a copy of the information and notice of trial not less than three days before the date on which he is to be tried:

Provided further that such last mentioned period of three days may be reduced to a shorter period if such person shall express his assent thereto and no special objection be made thereto on the part of the State.

(2) The sheriff or other proper officer shall in like manner deliver to each witness the said notice of trial.

350. The officer serving the copy of the said information and notices shall forthwith make to the registrar or other proper officer a return of the mode of service thereof.

Proceedings at Trial and Subsequent Proceedings

351. Where any person against whom an information has been duly preferred, and who is then at large, does not appear to plead to such information, whether he is under recognisance to appear or not, the court may issue a warrant for his apprehension.

352. Where a person is accused of a capital offence the State shall, if practicable, be represented by a law officer, or legal practitioner and if the accused is not defended by a legal practitioner the court shall, if practicable, assign a legal practitioner for his defence.

353. (1) The person to be tried upon an information shall be arraigned in accordance with the provisions contained in Part 24 of this Act, relating to the taking of pleas and the procedure thereon.

(2) After the plea of the accused to the information or any count thereof has been recorded, it shall no longer be open to the accused to raise with respect to his case any objection relating to the validity of any of the following matters, that is to say-

(a) the preliminary inquiry;

(b) the committal for trial;

(c) any direction or consent given in the case by a Judge in pursuance of section 340(2)(b) of this Act;

(d) any order made in the case under Part 31 of this Act for the prosecution of the accused for perjury.

Attendance of Witnesses

354. Every person who is bound by recognisance to attend at any criminal sessions as a witness, whether for the prosecution or for the defence, in any case to be tried at such sessions, shall, if he has received a subpoena or notice, be bound to attend the court on the day appointed for the trial of such case, and on subsequent days of the sessions, until the case has been disposed of or until he has been discharged by the court from further attendance.

355. If any person who has been bound by recognisance to attend as a witness, whether for the prosecution or for the defence, at the trial of any case does not attend the court on the day appointed for the trial of such case after having been served with notice of the trial, and no reasonable excuse is offered for such non-attendance, the court may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

356. If any person to whom any writ of subpoena is directed does not attend the court at the time and place mentioned therein, and no reasonable excuse is offered for such non-attendance, then, upon the court being satisfied that the writ was duly served or that the person to whom the writ is directed wilfully avoids service and that such person is likely to give material evidence, the court may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

357. Every person who makes default in attending as a witness in either of the cases mentioned in the two last preceding sections shall be liable, on the summary order of the court, to a fine of forty naira, and in default of payment, to imprisonment for a term of two months.

358. Every person whose attendance as a witness, whether for the prosecution or for the defence, is required in any case, and who has not been bound by recognisance to attend as a witness at the criminal sessions at which such case is to be tried, may be summoned by a writ of subpoena.

359. The registrar, on being furnished with the names and places of abode of any witnesses on behalf of the prosecution or defence whose attendance is required to be secured by subpoena, shall prepare and deliver to the sheriff for service a writ or writs of subpoena directed to such witnesses, together with as many copies thereof as there may be witnesses named in such writ or writs and when application shall be made to postpone any trial by reason of the absence of any witness stated to be material it shall be taken as prima facie evidence that the party applying for such postponement has not exercised all due and necessary diligence to secure the attendance of such witness if it shall appear that no subpoena to such witness was sued out four clear days at the least before the first day of the criminal sessions.

Miscellaneous Provisions

360. In addition to the provisions hereinbefore in this Part provided in respect of witnesses the provisions contained in this Part 20 of this Act, shall, mutatis mutandis, apply to witnesses required to give evidence in a case triable under this Part of this Act.

361. In addition to the provisions of this Part of this Act and to the other express provisions of this or any other enactment relating to trials of indictable offences the provisions of this Act relating to evidence, adjournment, addresses, the discharge and sentencing of convicted persons, the awarding of compensation, costs and the directing and ordering of forfeitures and also all other incidental matters relating to the trial of a case other than those specifically applicable to trial with a jury or with assessors, shall be applicable to a trial on information.

362. The judgment and subsequent sentence of the court shall be endorsed by the registrar on the information.

363. The procedure and practice for the time being in force of the High Court of Justice in England in criminal trials shall apply to trials in the High Court in so far as this Act has not specifically made. provision therefor.

Part 38
Summary Trial after Committal

364. (1) When an accused person has been committed by a magistrate for trial by the High Court and if on or before the day appointed for trial of such accused an information against him has not been filed or if on such day no duly authorised person appears before the court to prosecute the case on behalf of the State, the presiding Judge-

(a) shall direct the registrar to charge the accused with the offence in respect of which he has been committed for trial; and

(b) may in his discretion direct the registrar to charge the accused with any other offence founded in the opinion of the presiding Judge on the facts disclosed in the depositions; and

(c) shall explain the substance of the charge or charges to the accused and require him to plead thereto.

(2) If the accused admits the truth of the charge the court may convict him and pass sentence according to law.

(3) If the accused does not admit the truth of the charge the court shall proceed to hear the witnesses and to determine the case; the Judge shall take such steps as he may be authorised to use to enforce the attendance of such an accused person committed for trial and all material witnesses as he may think fit.

365. The trial of an accused under this Part of this Act shall be in accordance with the provisions of this Act so far as, in the opinion of the Judge, the same may be applicable.

Chapter 7

Provision Relating to Sentences of Death, Imprisonment, Caning and Fine

PART 39
General

366. Subject to the provisions of any written law relating to any specific offence or class of offence and to the jurisdiction conferred on any court or on any person presiding over such 30 of 1960. court the provisions hereinafter in this Chapter contained shall apply to sentences of death, imprisonment, caning and fine.

Part 40
Capital Sentences

367. (1) The punishment of death is inflicted by hanging the offender by the neck till he be dead.

(2) Sentence of death shall be pronounced in the following form-

"The sentence of the court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul."

368. (1) Where sentence of death has been passed such sentence shall only be carried out in accordance with the provisions of this Part of this Act.

(2) Where a woman found guilty of a capital offence is found in accordance with the provisions of section 376 of this Act to be pregnant the sentence of death shall not be passed on her but in lieu thereof she shall be sentenced to imprisonment for life.

(3) Where an offender who in the opinion of the court had not attained the age of seventeen years at the time the offence was committed is found guilty of a capital offence sentence of death shall not be pronounced or recorded but in lieu thereof the court shall order such person to be detained during the pleasure of the President and if so ordered he shall be detained in accordance with the provisions of Part 44 of this Act notwithstanding anything to the contrary in any written law.

369. A certificate under the hand of the registrar, or other officer of the court, that such sentence has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.

370. After the sentence of death has been pronounced the presiding Judge shall, as soon as conveniently may be, forward to the Governor a copy of the finding and sentence and of his notes of evidence taken on the trial together with a report in writing signed by him containing any recommendation or observations on the case which he thinks fit to make.

371. (Deleted by 1961 No. 40.)

371A. The provisions of sections 371B to 37IG of this Act shall apply in the case of a sentence of death for an offence in respect of which the power of pardon is vested in the President.

371B. Any Judge who pronounces a sentence of death shall issue under his hand and the seal of the court a certificate to the effect that sentence of death has been pronounced upon the person named in the certificate, and such certificate shall be sufficient and full authority in law for the detention of the offender in safe custody until the sentence of death pronounced upon him can be carried into effect and for carrying such sentence of death into effect in accordance with and subject to the provisions of this Part.

371c. The registrar of the court by which the person is sentenced to death shall, as soon as practicable after sentence has been pronounced-

(a) hand two copies of the certificate issued by the Judge under the provisions of section 371B of this Act to the police officer responsible for the safe custody of the sentenced person, one of which copies shall be retained by the police officer and the other handed to the superintendent or other officer in charge of the prison in which the person is to be confined;

(b) transmit to the sheriff one copy of the said certificate-, and

(c) file one copy of the said certificate with the record of the proceedings in the case.

371D. The Judge who passed sentence shall as soon as practicable after sentence has been pronounced, transmit to the Minister designated to advise the President on the exercise of the prerogative of mercy (hereafter in this Part referred to as the Minister) a certified copy of the record of the proceedings at the trial, together with a copy of the certificate issued by him under the provisions of section 371 B of this Act, and a report in writing signed by him containing any recommendations or observations with respect to the sentenced person and with respect to his trial that he thinks fit to make.

371E. (1) Where a person-

(a) has been sentenced to death; and

(b) has exercised his legal rights of appeal against the conviction and sentence and the conviction and sentence have not been quashed or the sentence has not been reduced, or has failed to exercise his legal rights of appeal or having filed an application for leave to appeal or an appeal, has failed to perfect or prosecute such application or appeal within the time prescribed by law,

the Minister shall, after considering the report made under section 371D of this Act, and after obtaining the advice of the Advisory Council on the Prerogative of Mercy, decide whether or not to recommend that the sentence should be commuted to imprisonment for life, or that the sentence should be commuted to any specific period, or that the offender should be otherwise pardoned or reprieved.

(2) Where, for the purposes of subsection (1) of this Act, the Advisory Council on the Prerogative of Mercy is required to advise the Minister in relation to any person sentenced to death, the Attorney-General of the Federation shall cause a record of the case to be prepared and submitted to the Advisory Council, and the Advisory Council shall, in giving its advice, have regard to the matters set out in that record.

371F. If the Minister decides not to recommend that the sentence should be commuted

or that the offender should be otherwise pardoned or reprieved he shall cause the sheriff to be informed and the sentence of death pronounced upon the offender shall be carried into effect in accordance with and subject to the provisions of this Part of this Act and the sheriff shall thereupon make arrangements accordingly pursuant to the sentence of death pronounced upon the offender.

371G. (1) Where the Minister decides to recommend that the sentence should be commuted or that the offender should be otherwise pardoned or reprieved, he shall issue an order, one copy of which shall be sent to the superintendent or other officer in charge of the prison in which the offender is confined, and another copy of which shall be sent to the sheriff, directing that the execution be not proceeded with, and, as the case may be, that the offender be imprisoned in accordance with the recommendation, or that the offender be released, subject in either case to such conditions, if any, as may be specified.

(2) The sheriff and the superintendent or other officer in charge of the prison in which the offender is confined shall comply with and give effect to every order issued under the provisions of subsection (1) of this Act.

372. The appropriate authority shall communicate his decision to the Judge who presided over the trial or to his successor in office sending to such Judge a copy of his order and such Judge shall cause such order to be entered in the record of the court.

373. (1) The order of the appropriate authority shall be under his hand and the Public Seal and shall be as in one of the forms set out in the Fourth Schedule of this Act or as near thereto as circumstances permit and if the sentence is to be carried out shall state the place and time where and when the execution is to be had and give directions as to the place of burial of the body or may direct that the execution shall take place at such time and at such place and the body of the person executed be buried at such place as shall be appointed by some officer specified in the order.

(2) When the place or time of execution or the place of burial is appointed by some person and is not stated in the order of the appropriate authority the specified officer shall endorse on the order over his signature the place and time of execution and place of burial or some one or more of them according to the terms of the order.

374. A copy of the order of the appropriate authority under his hand and the Public Seal shall be sent, if the execution is to take place in Lagos to the sheriff and if elsewhere to the Governor of a State in which the execution is to be carried into effect and the sheriff or Governor, as the case may be, shall have effect given thereto:

Provided that if for any reason a copy of the order of the appropriate authority be not received by the sheriff or Governor before the date fixed therein or endorsed thereon for execution, the said sheriff or Governor shall nevertheless have the order carried into effect upon the earliest convenient day after receipt thereof.

375. (1) The said copy of the order of the appropriate authority under his hand and the Public Seal or the directions S issued by the Governor under section 374 of this Act shall be sufficient authority in law to all persons to carry the sentence into effect in accordance with the terms thereof.

(2) Whenever the appropriate authority as defined in section 370 of this Act is the Governor of a State an order under his hand shall be sufficient authority in law notwithstanding that the place where the execution is to be had may be outside the State of such Governor.

Provided further that the substance of the order of the appropriate authority may in the first instance be communicated by telegraph to the Governor of a State who shall then telegraph to the appropriate authority for a confirmatory telegram, and on receipt of such confirmatory telegram, the Governor shall issue directions to cause effect to be given to the terms of the order of the appropriate authority.

375. (1) The said copy of the order of the appropriate authority under his hand and the Public Seal or the directions issued by the Governor under section 374 of this Act shall be sufficient authority in law to all persons to carry the sentence into effect in accordance with the terms thereof.

(2) Whenever the appropriate authority as defined in section 370 of this Act is the Governor of a State an order under his hand shall be sufficient authority in law notwithstanding that the place where the execution is to be had may be outside the State of such Governor.

Procedure Where Woman Convicted of Capital Offence is alleged to be Pregnant

376. (1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before or by which a woman is so convicted thinks fit so to do the court shall, before sentence is passed on her, determine the = is question whether or not she is pregnant.

(2) The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be laid before it on the part of the woman or on the part of the prosecution, and the court shall find that the woman is not pregnant unless it is proved affirmatively to the satisfaction of the court that she is pregnant.

(3) Where on proceedings under this section the court finds the woman in question is not pregnant the court shall pronounce sentence of death upon her.

(4) An appeal shall lie to the Supreme Court against such finding and that court, if satisfied that the finding should be set aside, shall quash the sentence passed on her and in lieu thereof pass on her a sentence of imprisonment for life.

(5) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of such a woman to allege in stay of execution that she is quick with child the last mentioned right having ceased to exist.

(6) The court shall report to the appropriate authority any case in which the court passes a sentence of imprisonment for life under this section.

Part 41
Imprisonment

377. Imprisonment, subject to the express provisions of any written law providing imprisonment as a punishment for an offence, may be either with or without hard labour as

the court may order and where no specific order is made the imprisonment shall be with hard labour.

378. (1) The Governor may by notice published in the State Gazette declare that in the case of certain chiefs named in such notice no sentence of imprisonment passed by virtue of the powers given under any written law by any court shall be carried out without the previous consent of the Governor and after the publication of such notice no such sentence passed on any chief named therein shall be carried out without such consent and the Governor may in his discretion fine the said chief in lieu of the sentence of the court.

(2) The court may order the said chief to be detained in custody or, in its discretion, may release him on bail until the decision of the Governor be known and any such period of detention shall, if the sentence was one of imprisonment and if the Governor orders that the sentence shall be carried out, be reckoned as part of the sentence of imprisonment passed as aforesaid.

379. Where the court has power to pass a sentence of imprisonment the court, in lieu of passing sentence of imprisonment, may order that the offender be detained within the precincts of the court or at any police station till such hour, not later than eight in the evening on the day on which he is convicted, as the court may direct:

Provided that the court shall, before making an order of detention under this section, take into consideration the distance between the place of detention and the offender's abode, if his abode is known to or ascertainable by, the court, and shall not make any such order of detention under this section as will deprive the offender of a reasonable opportunity of returning to his abode on the day on which such order of detention is made.

380. Where a sentence of imprisonment is passed on any person by a court the court may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced by any competent tribunal in Nigeria so however that where two or more sentences passed by a magistrate's court are ordered to run consecutively the aggregate term of imprisonment shall not exceed four years or the limit of jurisdiction of the adjudicating magistrate whichever is the greater.

381 A sentence of imprisonment takes effect from and includes the whole of the day of the date on which it was pronounced.

382. (1) Subject to the other provisions of this section, where a court has authority under any written law to impose imprisonment for any offence and has not specific authority to impose a fine for that offence, the court may, in its discretion, impose a fine in lieu of imprisonment.

(2) In the case of a conviction in the High Court, the amount of the fine shall be in the discretion of the court, and any term of imprisonment imposed in default of payment of the fine shall not exceed two years.

(3) In the case6f a conviction in a magistrate's court-

(a) the amount of the fine shall be in the discretion of the court but shall not exceed the maximum fine authorised to be imposed by the magistrate by or under the law by virtue of

which he was appointed a magistrate; and

(b) no term of imprisonment imposed in default of payment of the fine shall exceed the maximum fixed in relation to the amount of the fine by the scale specified in subsection (2) of section 390 of this Act.

(4) In no case shall any term of imprisonment imposed in default of payment of a fine which has been imposed by virtue of the power in that behalf contained in subsection (1) of this section, exceed the maximum term authorised as a punishment for the offence by the written law.

(5) The provisions of this section shall not apply in any case where a written law provides a minimum period of imprisonment to be imposed for the commission of an offence.

383. A person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty is liable upon recapture to undergo the punishment which he was undergoing at the time of his escape, for a term equal to that during which he was absent from prison, after the escape and before the expiration of the term of his original sentence, whether at the time of his recapture the term of that sentence has or has not expired.

Part 42
Caning

384 No person shall be sentenced to be caned more than once for the same offence.

385. No sentence of caning shall be passed on any female or on any male who, in the opinion of the court, has attained the age of forty-five years.

386. (1) Caning shall be with light rod or cane or birch, and the number of strokes shall be specified in the sentence and shall not exceed twelve.

(2) Where a person is convicted of one or more offences at one trial the total number of strokes awarded shall not exceed twelve.

387. When any person is convicted of any offence for which he is liable to imprisonment for a period of six months or more the court may, if it thinks fit, having regard to the prevalence of crime within its jurisdiction or to the antecedents of the offender, sentence such offender to caning either in addition to or in lieu of any other punishment to which the offender is liable.

388. (1) In the case of a sentence or order involving corporal punishment such punishment shall be carried out at such place as the court may direct and as soon as practicable unless the person convicted gives notice of appeal or of his intention to appeal or of his intention to apply for leave to appeal, as the case may be, in which case such punishment shall not be carried out until the determination of the appeal, or in cases where application for leave to appeal is finally refused of the application, and pending the determination of the application to appeal or the appeal, as the case may be, the accused shall be kept in custody or may be released on bail as the court may order.

(2) Where a sentence or order of corporal punishment as aforesaid has upon appeal been confirmed or varied the sentence or order of corporal punishment as confirmed or varied, as

the case may be, shall be carried out as soon as practicable thereafter and if the person upon whom the sentence or order is to be carried out is on bail and does not surrender to his bail, or if not in custody does not voluntarily surrender himself, the court which convicted such person may issue a warrant to arrest the said person who shall thereupon be apprehended and the sentence or order of corporal punishment shall thereafter be carried out as soon as practicable.

Part 43
Fines

389. A person convicted of an offence punishable by-

(a) imprisonment as well as fine, and sentenced to pay a fine, whether with or without imprisonment; or

(b) imprisonment or fine, and sentenced to pay a fine, may be ordered to suffer imprisonment, in default of payment of the fine, for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

390. (1) Where by any written law the court is empowered to impose a penalty for a summary conviction offence it may, in the absence of express provision to the contrary in the same or any other written law, order a defendant who is convicted of such offence, in default of payment of the sum of money adjudged to be paid by the order, either forthwith or at the time specified in the order, as the case may be, to be imprisoned, with or without hard labour, in accordance with the scale set forth in this section.

(2) Subject in every case to the provisions of the written law on which the order is founded, the period of imprisonment, whether with or without hard labour, which is imposed by the court in respect of the non-payment of any sum of money adjudged to be paid by an order shall be such period as in the opinion of the court will satisfy the justice of the case but shall not exceed the maximum fixed in the following scale, that is to say-

Where the fine-	The period of imprisonment shall not exceed-
does not exceed one naira	seven days
exceeds one naira and does not exceed two naira	fourteen days;
exceeds two naira and does not exceed twenty naira	one month;
exceeds twenty naira and does not exceed sixty naira	Two months;
exceeds sixty naira and does not exceed one	four months;

hundred naira	
exceeds one hundred naira and does not exceed two hundred naira	Six months
exceeds two hundred naira and does not exceed four hundred naira one year;	One year
exceeds four hundred naira	Two years

(3) No commitment for non-payment of a fine shall be for a longer period than two years, except where the law under which the conviction has taken place enjoins or allows a longer period.

Assessment of Fine

391. A court in fixing the amount of any fine to be imposed on an offender shall take into consideration, amongst other things, the means of the offender so far as they appear or are known to the court and where a fine is imposed the payment of the court fees and police fees payable in the case up to and including conviction shall not be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine, but the amount of the fine, or of such part thereof as may be paid or recovered, shall be applied as follows-

(a) in the first place in the repayment to the informant or complainant of any court or other fees paid by him and ordered by the court to be repaid;

(b) in the second place the payment of any court fees not already paid by the informant or complainant which may be payable under rules of court;

(c) the balance, if any, remaining after the aforesaid payments have been made shall be paid into general revenue.

Commitment of Defendant for Non-Payment of Fine or Penalty

392. (1) In every case where an order is made against any person for the payment of a sum of money and such person is liable to be imprisoned for a certain term unless such sum shall be sooner paid the court may do all or any of the following therefor-

(a) issue a warrant of commitment forthwith;

(b) allow time for the payment of the said sum;

(c) direct payment of the said sum to be made by instalments; or

(d) direct that the person liable to pay the said sum shall be at liberty to give, to the satisfaction of the court, security, either with or without a surety or sureties, for the payment of the said sum or any instalment thereof.

(2) Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order, further time may, on an application by or on behalf of the person liable to pay such sum, be allowed by a court having jurisdiction to issue a warrant of commitment in respect of the non-payment of such sum as aforesaid, or such court may, subject as aforesaid, direct payment by instalments of the sum so adjudged to be paid.

(3) Where a sum of money is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid.

(4) If before the expiration of the time allowed the person convicted surrenders himself to the court having jurisdiction to issue a warrant of commitment in respect of the non-payment of such sum as aforesaid, and states that he prefers immediate committal to awaiting the expiration of the time allowed, the court may if it thinks fit forthwith issue a warrant committing him to prison.

393. (1) If the person liable to pay any sum and to whom time has been given to pay either with or without a surety or sureties makes default in such payment or fails to enter into the security required by the court the court may issue its warrant of commitment requiring any police officer to take and convey such person to prison and there deliver him to the officer in charge of the prison, and requiring the officer in charge of the prison to receive such person into the prison and there to imprison him with or without hard labour, as the case may be, for such time as may be directed and appointed by the warrant of commitment, unless the sum of money adjudged to be paid by the order and also all other costs, charges, and expenses shall be sooner paid.

(2) Where application is made to the court for a warrant for committing a person to prison for non-payment of any sum of money adjudged to be paid by an order, the court may, if it deems it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to the court may seem just.

(3) When the court orders the imprisonment of any person, the court may, if it thinks fit, order that such imprisonment shall not commence forthwith, but shall commence on any day not more than three months after the date of such order as the court may fix, and in such case the court may either suffer the person to go at large until such day or discharge him upon his entering into a recognisance, with or without sureties, conditioned for his reappearance on such day to undergo such imprisonment.

(4) Any warrant of commitment issued under the provisions of this section may be executed on any day including a Sunday or a public holiday.

394. In all cases where any person against whom a warrant of commitment for non-payment of any sum of money adjudged to be paid by an order is issued, pays or tenders to the person having the execution of the same the sum or sums in such warrant mentioned together with the amount of the expenses of such warrant up to the time of such payment or tender, the person having the execution of such warrant shall cease to execute the same.

395. Where any person is brought to any prison to be imprisoned by virtue of a warrant of commitment there shall be endorsed on such warrant the day on which such person was arrested by virtue thereof and the imprisonment shall be computed from such day and

inclusive thereof.

396. Where any person has been committed to prison by the court for default in finding a surety or sureties the court may, on application made to it by such person or by some person acting on his behalf, inquire into the case of such person, and if upon new evidence produced to the court or proof of a change of circumstances the court thinks having regard to all the circumstances of the case that it is just so to do, the court may reduce the amount for which it was ordered that the surety or sureties should be bound, or dispense with the surety or sureties, or otherwise deal with the case as the court may think just.

397. (1) Where any person has been committed to prison by the court for non-payment of any sum of money adjudged to be paid by an order, such person may pay or cause to be paid to the officer in charge of the prison the sum mentioned in the warrant of commitment together with the amount of the costs, charges and expenses, if any, also mentioned therein and the officer in charge of the prison shall receive the same and thereupon discharge such person, unless he is in custody for some other matter.

(2) In any case where under the last preceding subsection a sum has been received in part satisfaction of a sum due from a prisoner in consequence of the conviction of the court such sum shall be applied firstly, towards the payment in full or in part of any costs or damages or compensation which the court may have ordered to be paid to the complainant, and, secondly, towards the payment of the fine, if any, imposed on the prisoner.

(3) Subject to the provisions of subsection (2) of this Section where an amount is paid towards a fine the procedure as hereunder in this subsection set forth shall be followed-

(a) the imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed as the sum so paid towards the fine bears to the amount of the fine for which such person is liable-

(b) the superintendent or other officer in charge of a prison in which is confined a person who has made such part payment shall as soon as practicable thereafter take such person before a court and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction and shall make such order as is required in the circumstances:

Provided that where in the opinion of the superintendent or other officer as aforesaid the delay occasioned by taking such person before a court shall be such that the person will be detained beyond the date upon which he should by reason of such part payment be released, such superintendent or other officer may release such person on the day which appears to such superintendent or other officer to be the correct day, endorse the warrant accordingly and shall as soon as practicable thereafter inform the court of the action taken and such court shall thereupon make such order or record as the court may consider to be required in the circumstances.

(4) In reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account and in reckoning the sum which will secure the reduction of a term of imprisonment, fractions of a kobo shall be omitted.

Distress
Fines may be ordered to be recoverable by distress.

398. Where under the authority of any written law the court imposes a fine or any pecuniary penalty whether or not that fine or penalty is accompanied by a power to impose imprisonment and no special provision other than recovery by distress is made for the recovery of such fine or penalty, the court may order such fine or penalty to be recoverable by distress and in default of such distress satisfying the amount of the fine or penalty as aforesaid, may order that the offender be imprisoned, with or without hard labour as the case may be, in accordance with the scale set forth in section 390 of this Act.

399. (1) Where the court orders a sum to be recoverable by distress the court shall issue its warrant of distress for the purpose of recovering the same, such warrant shall be in writing and signed by the court, it shall authorise the person charged with the execution thereof to take any money as well as any goods of the person against whom distress is levied and any money so taken shall be treated as if it were the proceeds of sale of goods taken under the warrant.

(2) In the execution of a distress warrant the following provisions shall have effect-

(a) a warrant of distress shall be executed by or under the direction of the sheriff,

(b) if the person charged with the execution of the warrant is prevented from executing the same by the fastening of doors or otherwise, the magistrate may, by writing under his hand endorsed on the warrant, authorise him to use such force as may be necessary to enable him to execute the warrant;

(c) the wearing apparel and bedding of the person and of his family, and to the value of ten naira the tools an implements of his trade, shall not be taken;

(d) except as provided in paragraph (e) of this subsection and so far as the person upon whose movable property the distress is levied consents in writing to an earlier sale the goods distrained on shall be sold at public auction not less than five days and not more than fourteen days after the making of the distress; but where consent in writing is so given as aforesaid the sale may be in accordance with such consent;

(e) subject as aforesaid, the goods distrained on shall be sold within the time fixed by the warrant, unless the sum for which the warrant was issued and also the charges, if any, of taking and keeping the goods distrained on, are sooner paid;

(f) if any person charged with the execution of a warrant of distress wilfully retains from the proceeds of any property sold to satisfy the distress, or otherwise exacts, any greater costs or charges than those to which he is for the time being entitled, by law, or makes any improper charge, he shall be liable, on summary conviction before a magistrate, to a penalty not exceeding twenty naira:

Provided that nothing herein contained shall affect the liability of any such person to be prosecuted and punished for extortion;

(g) a written account of the costs and charges incurred in respect of the execution of any

warrant of distress shall, as soon as practicable, be delivered by the person charged with the execution of the warrant to the magistrate; and it shall be lawful for the person upon whose movable property the distress was levied, at any time within one month after the making of the distress, to inspect such account, without payment of any fee or reward, at any time during office hours, and to take a copy of such account;

(h) a person charged with the execution of a warrant of distress shall sell the distress or cause the same to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall pay to the magistrate or to some person specified by him, the remainder of such amount, in order that the same may be applied in payment of the sum for which the warrant was issued and of the proper costs and charges of the execution of the warrant, and that the surplus, if any, may be rendered to the person upon whose movable property the distress was levied.

400. Where a part only of the amount ordered to be recovered by distress is so recovered the period imprisonment ordered to be suffered in default of recovery of the amount imposed shall be reduced accordingly and shall bear the same proportion to the full period as the amount recovered bears to the total amount ordered to be recovered, the warrant of commitment shall be drawn up accordingly and after such committal the provisions of section 397 of this Act, shall apply.

Chapter 8
Detention during the Pleasure of President and Deportation

Part 44
Detention during the Pleasure of the President

401. (1) When any person is ordered to be detained during the pleasure of the President he shall notwithstanding anything in this Act or in any other written law contained be liable to be detained in such place and under such conditions as the President may direct and whilst so detained shall be deemed to be in legal custody.

(2) A person detained during the pleasure of the President may at any time be discharged by the President on licence.

(3) A licence may be in such form and may contain such conditions as the President may direct.

(4) A licence may at any time be revoked or varied by the President and where a licence has been revoked the person to whom the licence relates shall proceed to such place as the President may direct and if he fails to do so may be arrested without warrant and taken to such place.

Part 45
Deportation

402. In this Part of this Act, the word "deported" with its grammatical variations and cognate expressions means-

(a) in the case of a citizen of Nigeria deportation from the place where the offence took place

or proceedings which culminated in the recommendation for deportation were heard to any other place in Nigeria; and

(b) in the case of a person not a citizen of Nigeria to a place outside Nigeria.

403. Where a person not a citizen of Nigeria is deported to some place within Nigeria and such person requests that instead of remaining in Nigeria he may leave Nigeria and undertakes not to return for such term of years as may be approved by the President or at all and the President accedes to such request the person shall be permitted to leave Nigeria, and may, if the President so directs, be detained in custody until his deportation and if such person returns to Nigeria within the period during which his deportation was to remain in force such person may be again deported on a fresh warrant under the original order or under a new order.

404 Where a person is convicted of an offence punishable by imprisonment without the option of a fine the court may, in addition to or instead of any other punishment, recommend to the President that he be deported if it appears to the court to be in the interest of peace, order and good government that an order of deportation should be made under this section.

405 Where, upon any sworn information, it appears to a court that there is reason to believe that any person in the State is about to commit a breach of the peace, or that his conduct is likely to produce or excite to a breach of the peace, the court, after due inquiry at which the person concerned shall be present, may order him to give security in two or more sureties for peace and good behaviour, and in default, may recommend to the President that he be deported.

406. Where it is shown by evidence on oath to the satisfaction of a court that any person in the State is conducting or has conducted himself so as to be dangerous to peace and good order, or is endeavouring or has endeavoured to excite enmity between any section of the people of Nigeria and the Federal Republic or is intriguing or has intrigued against constituted power and authority in Nigeria, the court may recommend to the President that he be deported.

407. (1) Where a person required to give security under section 405 of this Act makes default in so doing and the court contemplates recommending to the Minister that he be deported, or where the court contemplates recommending to the President the deportation of a person to whom section 406 of this Act relates, before making any such recommendation the court shall require the person concerned to attend before the court and, after in the latter case being informed of the allegations made against him, be given an opportunity to show cause why he should not be deported.

(2) After considering the representation, if any, of the person concerned and the facts upon which the proceedings are founded the court shall decide whether or not to recommend to the President that the person concerned be deported.

408 Where the court decides to recommend to the President the deportation of any person under section 404, 405 or 406 of this Act the court shall forthwith forward to the resident the recommendation together with a report setting out the reasons why the court considers it necessary to make the recommendation and a certified copy of any proceedings relating thereto.

409. Where a recommendation for deportation has been made in respect of a person to whom section 404, 405 or 406 of this Act relates such person may be detained in custody pending the decision of the President and during such time shall be deemed to be in lawful custody.

410 If after considering any such recommendation as aforesaid the President shall decide that in the interest of peace, order and good government, an order of deportation should be made, he may by writing under his hand and seal order the person to be deported to such place outside Nigeria as he may direct:

Provided that an order shall not be made to deport a citizen of Nigeria to any place outside Nigeria.

411. If after such consideration as aforesaid the President shall decide that no order of deportation shall be made, he shall cause the court to be so informed, and the court may, in the case where a recommendation has been made under section 404 of this Act instead of imposing any other punishment, deal with the case as if no such recommendation had been made, and make such order of imprisonment or other punishment as may be authorised by law.

412. (1) If a person ordered to be deported is sentenced to any term of imprisonment, such sentence of imprisonment shall be served before the order of deportation is carried into effect.

(2) An order of deportation may be expressed to be in force for a time to be limited therein, or for an unlimited time and may require the deported person to report himself to the nearest administrative officer or officer of police at intervals of not less than thirty days.

(3) An order of deportation shall be sufficient authority to all persons to whom it is directed or delivered for execution to receive and detain the person therein named and to carry him to the place named.

(4) If a person leaves or attempts to leave the district or place to which he has been deported, while the order of deportation is still in force, without the written consent of the President, which consent may be given subject to any terms as to security for good behaviour or otherwise as to the President may seem good, or wilfully neglects or refuses to report himself as ordered, such person is liable to imprisonment for six months and to be again deported on a fresh warrant under the original order or under a new order.

Chapter 9
Juvenile Offenders and Probation

Part 46
Juvenile Offenders

413. Where a child or young per son is brought before the High Court or a magistrate's court charged with an offence the charge shall be inquired into in accordance with the provisions of the Children and Young Persons Act and not in accordance with the provisions of this Act.

414. The words "conviction" and "sentence" shall cease to be used in relation to children and young persons and any sentence" reference in any Act to a person convicted, a conviction or a sentence shall, in the case of a child or young person, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

415. A court when inquiring into a charge against a child or young person or when hearing an application for an order that such a person be sent to a Government establishment or an institutional which inquiry the attendance of the child or young person is required, shall, when practicable, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held.

416 Where in the course of any proceedings in a court sitting as provided in section 415 of this Act it appears to the court that the person charged or to whom the proceedings relate has attained the age of seventeen years or upwards or where in the course of any proceedings in a magistrate's court other than a court sitting as provided in section 415 of this Act it appears that the person charged or to whom the proceedings relate has not attained the age of seventeen years, nothing in section 415 of this Act shall be construed as preventing the court if it thinks it undesirable to adjourn the case from proceeding with the hearing and determination of the case.

417 Provisions shall be made, as far as practicable, for preventing persons who apparently have not yet attained the age of seventeen years whilst being conveyed to or from court or whilst waiting before or after their attendance in court from associating with adults charged with or convicted of any offence other than an offence with which the person who apparently has not yet attained the age of seventeen years is jointly charged or found guilty.

418. In a court sitting as provided in section 415 of this Act no persons other than members and officers of the court and the parties to the case, the legal practitioners representing them, and other persons directly concerned in the case shall, except by leave of such court, be allowed to attend:

Provided that bona fide representatives of a newspaper or news agency shall not be excluded except by special directions of the court.

419. (1) No child shall be ordered to be imprisoned.

(2) No young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment or otherwise.

(3) A young person ordered to be imprisoned shall not, so far as the same may be practicable, be allowed to associate with adult prisoners.

420. Where an offender found to have committed a capital offence has not attained the age of seventeen years the provisions of subsection (3) of section 368 of this Act shall apply.

421 Notwithstanding anything in this Act to the contrary where a child or young person is found guilty of an attempt to murder, or of manslaughter, or of wounding with intent to do

grievous bodily harm, the court may order the offender be detained for such period as may be specified in the order, and where such an order is made the child or young person shall, during the period, be liable to be detained in such place and on such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

422 Where a person who apparently has not attained the age of seventeen years is apprehended with or without warrant and cannot be brought forthwith before a court, the police officer in immediate charge for the time being of the police station to which such person is brought, shall inquire into the case and shall-

(a) unless the charge is one of homicide or other grave crime; or

(b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or

(c) unless the officer has reason to believe that the release of such person would defeat the ends of justice,

release such person on a recognizance being entered into by him or by his parent or guardian, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge.

423. Where a person who apparently has not attained the age of seventeen years having been apprehended is not so released as aforesaid, the officer to whom such person is brought shall cause him to be detained in a suitable place, which is not a police station cell for detention of adult prisoners or a prison, until he can be brought before the court, unless the officer certifies-

(a) that it is impracticable to do so; or

(b) that he is of so unruly a character that he cannot be safely so detained; or

(c) that by reason of the state of health or his mental or bodily condition it is inadvisable so to detain him,

and the certificate shall be produced to the court before which the person is brought.

424. It shall be the duty of the police officer in immediate charge of a police station to make arrangements for preventing, so far as practicable, a person who apparently has not attained the age of seventeen years while being detained in a police station from associating with an adult charged with an offence.

425. (1) A court on remanding or committing for trial a child or young person who is not released on bail shall, instead of committing him to prison, order him to be detained in a place deemed by the court to be a place of safe custody to be named in the commitment to be there detained for the period for which he is remanded or until he is thence delivered in due course of law:

Provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court is of opinion that he is of so unruly a character that he cannot be

safely so committed, or that he is so depraved a character that he is not a fit person to be so detained or that no person can be found who will agree to undertake the custody of such child.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody or to be of so depraved a character that he is not a fit person to be so detained or the custody of whom no person can be found to agree to undertake, revoked by any court and if it is revoked the young person may be committed to prison.

426. (1) Where a child or young person is charged with any offence, or where a child is brought before a court on an application for an order to send him to a Government establishment or an institution, his parent or guardian may in any case, and shall, if he can be found and resides within a reasonable distance and the person so charged or brought before the court is a child, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where the child or young person is arrested, the police officer by whom he is arrested or the police officer in immediate charge of the police station to which he is brought shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, the provisions of this Act for enforcing the attendance of an accused person shall apply, with the necessary adaptations and modifications as appear appropriate for the purpose, and a summons to a child or young person may include a summons to his parent or guardian.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person:

Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

427. Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act enabling the court to deal with the case, the case should be dealt with, namely whether-

(a) by dismissing the charge; or

(b) by discharging the offender on his entering into a recognizance; or

(c) by so discharging the offender and placing him under the supervision of a probation officer; or

(d) by committing the offender to the care of a relative or other fit person; or

(e) by sending the offender to a Government establishment or an institution; or

(f) by ordering the offender to be whipped; or

(g) by ordering the offender to pay a fine, damages, or costs; or

(h) by ordering the parent or guardian of the offender to pay a fine, damages, or costs; or

(i) by ordering the parent or guardian of the offender to give security for his good behaviour; or

(j) by committing the offender with the approval of the Governor, to custody in a place of detention established under the Children and Young Persons Law of a State;

(k) where the offender is apparently fourteen years old or upwards, by sentencing him to imprisonment; or

(1) by dealing with the case in any other manner in which it may be legally dealt with:

Providing that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section.

428. Where a child is charged before a magistrate's court with an offence and the court deals with the case summarily, the court may not inflict on him a fine exceeding four naira.

429. (1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages, or costs may be imposed and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs whether with or without any other punishment, the court may in any case, and shall if the offender is a child order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that the parent or guardian has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where the court thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or

imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6) A parent or guardian my appeal against an order under this section to the High Court.

430. A child or young person found guilty of an offence which is a felony shall not be regarded as being convicted of felony for the purposes of any disqualification attaching to felony.

431. Where a child or young person is himself order by the court to pay costs in addition to a fine the amount of the costs so ordered to be paid shall in no case exceed the amount of the fine and, except in so far as the court may think fit expressly to order otherwise, all fees payable or paid by the complainant in excess of the amount of costs so ordered to be paid shall be remitted or repaid to him and the court may also order the fine or any part thereof to be paid to the complainant in or towards the payment of his costs.

432. (1) A person who apparently has not attained the age of nine years shall not be sentenced to imprisonment for any offence, or committed to prison in default of payment of a fine, damages, or costs.

(2) A person who apparently has attained nine years of age but who has not attained fourteen shall not be sentenced to imprisonment for an offence or committed to prison in default of payment of a fine, damages, or costs unless the court is of opinion that the individual in question is of so unruly a character that he cannot be detained in a convenient Government establishment or an institution or that he is of so depraved a character that he is not a fit person to be so detained.

433. Where a child or young person is found guilty of an offence punishable in the case of an adult with imprisonment or would if he were an adult be liable to be imprisoned in default of payment of any fine, damages, or costs and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may, in lieu of making an order upon such a finding and sending him to prison or committing him to prison order that he be committed to custody in a Government establishment or an institution named in the order for such term as may be specified in the order.

434 A child or young person whilst so detained and whilst being conveyed to and from the place of detention shall be deemed to be in legal custody and if he escapes may be apprehended without warrant and brought back to the place in which he was detained.

Part 47
Probation

435. (1) Where any person is charged before a court with an offence punishable by such court, and the court thinks that the charge is proved but is of opinion that having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment or that it is expedient to release the offender on probation the court may without proceeding to conviction make an order either-

(a) dismissing the charge; or

(b) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear at any time during such period not exceeding three years as may be specified in the order.

(2) The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss, not exceeding twenty naira or if a higher limit is fixed by any enactment relating to the offence that higher limit, and to pay such costs of the proceedings as the court thinks reasonable and if the offender has not attained the age of seventeen years and it appears to the court that the parent or guardian of the offender has conduced to the commission of the offence the court may under and in accordance with the provisions of Part 46 of this Act after hearing such parent or guardian, order payment of such damages and costs by such parent or guardian.

(3) Where an order under this section is made the order shall, for the purpose of revesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction.

436. (1) A recognisance ordered to be entered into under this Part shall if the court so orders contain a condition that the offender be under the supervision of such person or persons of either sex, hereinafter called a probation officer, as may, with the consent of such probation officer, be named in the order during the period specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognisance is in this Part of this Act referred to as a probation order.

(2) A recognisance under this Part of this Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor and any other matters as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

(3) The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe.

437. The person named in a probation order may at any time be relieved of his duties and in any such case or in case of the death of the person so named another person may by consent be substituted by the court before which the offender is bound by his recognisance to appear for conviction or sentence.

438 It shall be the duty of a probation officer, subject to the directions of the court-

(a) if the person on probation is not actually residing with the probation officer to visit or receive reports on the person under supervision at such reasonable intervals as may be specified in the probation order or subject thereto as the probation officer may think fit;

(b) to see that he observes the conditions of his recognisance;

(c) to report to the court as to his behaviour;

(d) to advise, assist, and befriend him and when necessary to endeavour to find him suitable employment.

439. The court before which any person is bound by a recognisance under this Part of this Act to appear for conviction and sentence or for sentence-

(a) may at any time if it appears to it upon the application of the probation officer that it is expedient that the terms or conditions of the recognisance should be varied summon the person bound by the recognisance to appear before it and if he fails to show cause why such variation should not be made vary the terms of the recognisance by extending or diminishing the duration thereof, so, however, that it shall not exceed three years from the date of the original order, or by altering the conditions thereof or by inserting additional conditions; or

(b) may on application being made by the probation officer, and on being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he be any longer under supervision, discharge the recognisance.

440. (1) If the court before which an offender is bound by his recognisance under this Part of this Act to appear for conviction or sentence is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension or may if it thinks fit instead of issuing a warrant in the first instance issue a summons to the offender and his sureties, if any, requiring him or them to attend at such court and at such time as may be specified in the summons.

(2) The offender when apprehended shall if not brought forthwith before the court before which he is bound by his recognisance to appear for conviction or sentence be brought before another court.

(3) The court before which an offender on apprehension is brought or before which he appears in pursuance of such summons as aforesaid may if it is not the court before which he is bound by his recognisance to appear for conviction or sentence remand him to custody or on bail until he can be brought before the last mentioned court.

(4) An offender so remanded in custody may be committed during remand to any prison to which the court having power to convict or sentence him has power to commit prisoners; and in the case of a child or young person he shall, if remanded, be dealt with wherever practicable in accordance with the provisions of Part 46 of this Act.

(5) A court before which a person is bound by his recognisance to appear for conviction and sentence on being satisfied that he has failed to observe any conditions of his recognisance may forthwith, without further proof of his guilt, convict and sentence him for the original offence.

Chapter 10
Assessors and Inquiries by Direction of the Attorney-General

Part 48
Assessors

441. Every male person, between the ages of twenty-one years and sixty years residing in Nigeria, who is able to speak the English language and understand the same shall be qualified to serve as an assessor:

Provided that it shall not be an essential qualification for an assessor that he shall be able to speak the English language and understand the same when spoken.

441A. No person who-

(a) has been convicted of any treason or felony unless he has received a free pardon therefor; or

(b) is a lunatic, or one of unsound mind, or imbecile, or deaf, or blind, or afflicted with any other permanent infirmity of body or mind; or

(c) has entered into a deed of arrangement with his creditors, is or shall be qualified to serve as an assessor.

442. The sheriff, before the sitting, of any court whereat assessors shall be necessary, shall, on receiving from the court a precept, issue summonses requiring the attendance thereat of the number of persons therein named, which number shall not exceed ten, qualified to serve as assessors and who are within the division of the court requiring their services, and every such summons shall be personally served upon or left at the usual or last known place of abode of the person so summoned three clear days, or such other time as the court may direct, before the day appointed for the sitting of the Court.

443. Not more than one person employed in the same merchantile establishment shall be required to serve together on any panel at any session of the court unless the business of the court should be impeded by adherence to the provisions of this section.

444. The sheriff shall cause to be delivered to the court at the opening of the sessions a list containing the names, occupations, and places of abode of the persons so summoned.

445. (Omitted as applying only to the former Protectorate.)

446. If the trial is to be held with the aid of assessors, the judge shall select from the persons summoned to act as assessors such number, not being ordinarily less than two, as he shall think fit to assist him in such trial:

Provided that the person charged may object to any assessors so appointed, and the court shall refuse to allow such assessor to sit if the grounds for such objection are substantial and reasonable.

447. If in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor shall from any sufficient cause be prevented from attending throughout the trial, the trial shall proceed with the aid of the remaining assessors or assessor.

448. In the event of adjournment the assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting till the conclusion of the trial.

449. (1) The opinion of each assessor shall be given orally, and shall be recorded in writing by the court, but the decision of the court shall be vested exclusively in the Judge.

(2) Any assessor dissenting from any decision of the court may have his dissent and the grounds thereof recorded.

450. (1) Any person summoned to attend the court as an assessor who shall not, without reasonable excuse (the burden of proof whereof shall rest on such assessor), duly attend and be present at the court on such summons and at all times appointed by the court for adjournment, and any person present in court who, being called to serve as an assessor, without reasonable excuse, refuses so to serve, shall be liable to a fine of fifty naira or imprisonment for one month if the fine be not sooner paid.

(2) Such punishment may be inflicted summarily on an order to that effect made by the court:

Provided that the court may, if it shall deem fit, remit any fine so imposed.

451. In cases where any person is so fined in his absence the registrar shall forthwith send him a written notice of the fact, requiring him to pay the fine, or to show cause before the court within four days for not paying, the same.

452. Nothing herein contained shall prevent the court from exempting for reasonable cause any person from serving as an assessor.

Part 49
Inquiries by Direction of Attorney-General

453. Where a sworn information is made before any magistrate that an offence against a law of the State has been committed, the Attorney-General of the State may, whether or not any known person be charged with the commission of the offence, direct any magistrate to hold an inquiry under this Part of this Act and may, if he thinks fit, direct that such inquiry be held in camera.

454. The officer so directed shall then examine on oath concerning such offence any person whom he has reason to believe to be able to give material evidence concerning it, other than a person confessing himself to be the offender, and shall take the deposition of such witness and, if he sees cause, bind such witness by his own recognisance to appear and give evidence at any place where, and at any time when, he may be called upon to do so.

455. At the conclusion of an inquiry under this Part of this Act the said officer shall forward to the Attorney-General of the State the original depositions and recognisances of the witnesses together with his report upon the proceedings, and shall state in such report his opinion as to the persons implicated in the commission of such offence.

456. The provisions contained in this Act relating to summoning witnesses, and to compelling their attendance and to their examination on oath, and to binding them over to give evidence, shall apply for the purposes of an inquiry under this Part of this Act.

457. If a person is put upon his trial for an offence respecting which an inquiry under this

Part of this Act has been held, he shall, if he so request, be supplied free of charge, at least three days before such trial, with an authenticated copy of all depositions taken at such inquiry.

458. A witness examined at such inquiry shall not to be excused from answering any question on the ground that the answer thereto may incriminate or tend to incriminate him but any confession or answer by a person to a question put at such examination shall not, except in the case of any criminal proceeding for perjury committed at or after the holding of such inquiry, be in any proceeding admissible in evidence against him.

458A. The provisions of this Part of this Act shall apply in relation to an offence against a Federal law as they apply in relation to an offence against a Law of the State but as if references to the Attorney-General of the State were references to the Attorney-General of the Federation.

Chapter 11
Miscellaneous

Part 50
Coroner's Warrant

459. From and after the coming into operation of this Act, no person shall be committed for trial on a coroner's inquisition.

Appeals

460. (Deleted by L.N. 47 of 1955.)

Fees

461. (1) Subject to the provisions of section 462 of this Act in every proceeding had before any court such fees as may be prescribed under this Act shall be paid.

(2) `A court may in any proceeding in which good cause appears to the court for so doing, suspend payment of any fees payable therein until the conclusion of such proceeding and the court may then direct such fees to be paid as costs by any party to the proceeding by whom the court has power to order costs to be paid or remit the payment of such fees.

462. The provisions of this Act relating to fees and to the giving of security shall not apply to the State or to any public officer acting in his official capacity.

Forms

463. (1) Subject to the express provisions, if any, of the rules, the forms and precedents contained in the First, Second and Third Schedules to this Act may, in accordance with a any instructions contained in the said forms, and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply and, when so used, shall be good and sufficient in law.

(2) The forms in the said Schedules may be added to, revoked, replaced or varied by the

rules in all respects as if they had originally been so made.

Rules of Court

464. (1) The Chief Judge may make rules in respect of any or all of the following matters-

(a) fees to be paid under this Act;

(b) forms to be used for the process and procedure of the courts;

(c) accounts to be rendered of moneys received by any person under this Act;

(d) the method of issue of process under this Act, and the manner of receipt of and accounting for fees in respect of such process;

(e) regulating the procedure in connection with information filed by the Attorney-General of the State under the provisions of section 72 of this Act;

(f) prescribing anything or any person required to be prescribed under the provisions of this Act; and

(g) generally for carrying into effect the purposes of this Act.

(2) Where rules are made under this section separate rules shall be made in respect of the practice and procedure in the High Court and in magistrates' courts, save where the procedure prescribed by such rules applies equally to the High Court and to magistrates' courts.

Forms and Procedure under Other Written Laws

465. Nothing in this Act shall affect the use or validity of any special forms in respect of any procedure or offence specified under the provisions of any other written law or the validity of any other procedure provided by any other written law.

Part 51
Special Provisions relating to Corporations

466. (1) The provisions of this Part of this Act shall have effect in relation to proceedings in the High Court or in a magistrate's court.

(2) The provisions of this Part of this Act shall apply to all trials and preliminary inquiries held under this Act and where there is a conflict between the provisions of this Part of this Act and any other provisions of this Act, the provisions of this Part of this Act shall prevail.

467. (1) In this Part of this Act "corporation" means any body corporate, incorporated in Nigeria or elsewhere.

(2) In this Part of this Act "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Part of this Act authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the

corporation before any court for any other purpose.

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

468. Where a corporation is called upon to plead to any charge or information (including a new charge or information framed under the provisions of section 162 of this Act, or a charge or information added to or altered under the pro- visions of section 162 or section 163 of this Act) it may enter in writing by its representative a plea of guilty or not guilty or any plea which may be entered under the provisions of section 221 of this Act, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

469. A magistrate may commit a corporation for trial to the High Court by an order in writing empowering the prosecutor to prefer an information in respect of the offence named in the order.

470. An order under section 469 of this Act shall not prohibit the inclusion in the information of counts that, under the proviso to subsection (2) of section 340 of this Act, may be included in the information in substitution for or in addition to counts charging the offence named in the order.

471. A representative may on behalf of a corporation-

(a) make a statement before a magistrate holding a preliminary inquiry in answer to the charge;

(b) consent or object to summary trial;

(c) state whether the corporation is ready to be tried on a charge or information or altered charge or information to which the corporation has been called on to plead under the provisions of subsection (1) of section 164 of this Act;

(d) consent to the hearing and determination of a complaint before the return date of a summons in accordance with section 84 of this Act;

(e) express assent to the trial of the corporation on information in accordance with the further proviso to subsection (1) of section 349 of this Act, notwithstanding that a copy of the information and notice of trial have not been served on the corporation three days or more before the date on which the corporation is to be tried.

472. Where a representative appears, any requirement of this Act that anything shall be done in the presence of the accused, or shall be read or said or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative

or read or said or explained to the representative:

Provided that paragraph (a) of subsection (1) of section 287 of this Act shall be sufficiently complied with if the representative is asked if he has any witnesses to examine or other evidence to adduce for the defence, and if the witnesses and other evidence if any are heard.

473. Where a representative does not appear, any such requirement as is referred to in section 472 of this Act, and any requirement that the consent of the accused shall be obtained for summary trial, shall not apply.

474. Subject to the preceding provisions of this Part of this Act, the provisions of this Act relating to the inquiry into and trial of offences shall apply to a corporation as they apply to an adult.

475. Where a corporation is charged jointly with an individual with an offence before a magistrate, then if the offence is not a summary conviction offence, but one that may be tried summarily with the consent of the accused, the magistrate shall not try either of the accused summarily unless each of them consents to be so tried.

476. The provisions of paragraph (b) of section 89 of this Act shall apply to the service on a corporation of any information, notice or other document which is by this Act required to be served upon or delivered to a person charged as they do to the service of a summons.

Chapter 12

Part 52
Service and Execution throughout Nigeria of the Process of the Courts of the States

477. In this Chapter of this Act, unless the context otherwise requires-

"Chapters 1 to 11" means Chapters 1 to 11 inclusive of this Act;

"court", "Judge", "justice of the peace" and "magistrate" mean a court, Judge, justice of the peace or magistrate to which Chapters 1 to 11 of this Act apply;

"State" includes the Federal Capital Territory, Abuja.

478. (1) This section applies to a summons (other than a summons to compel the attendance of a witness) which is issued under this Act on information or complaint.

(2) A summons to which this section applies which is issued in one State may be served on the person to whom it is addressed in another State.

(3) Service under this section may, subject to the rules of court in force under this Act, be effected in the same way as it could be effected in the State in which the summons was issued.

(4) Service so effected shall have the same force and effect as if it had been service in the State in which the summons was issued, and if the person on whom service has been

effected fails to appear before the court and at the time and place specified in the summons and it appears to the court that service was effected a sufficient time before the time so specified the like proceedings may be taken as if service had been effected in the State in which the summons was issued.

(5) The provisions of sections 94 and 95 of this Act shall apply in relation to a summons served outside the State in which it was issued as they apply to such summons served within the State in which it was issued but as if the reference in section 95 of this Act to "the court which issued the summons" were a reference to the court of a magistrate of the State in which it was served.

479. (1) When a subpoena or summons has been issued in accordance with Chapters 1 to 11 of this Act by any court, Judge or magistrate in any State requiring any person to appear and give evidence or to produce books or documents in any proceeding under this Act, such subpoena or summons may, if the court, Judge or magistrate is satisfied that the testimony of such person or the production of such books or documents is necessary in the interests of justice, by leave of such court, Judge or magistrate on such terms as the court,

(2) When a person has been bound by recognisance in accordance with Chapters 1 to 11 to attend as a witness at any court of a State, a notice of the hearing or trial of the case in respect of which he is bound may be served on such person in any other State.

(3) If a person upon whom a subpoena, summons or notice of hearing has been served in accordance with subsection (1) of this section fails to attend at the time and place mentioned in such subpoena, summons, or notice of hearing such court, Judge or magistrate may on proof that the subpoena, summons, or notice of hearing was duly served on such person issue such warrant for the apprehension of such person as such court, Judge or magistrate might have issued if the subpoena, summons or notice of hearing had been served in the State in which it was issued.

(4) Such warrant may be executed in such other State in the manner provided in this Chapter of this Act in case of warrants issued for the apprehension of persons charged with an offence.

480. (1) Where-

(a) any person accused before any court of a State is confined in a prison or other lawful place of confinement in any other State; or

(b) it appears to any court of a State that the attendance of any person who is in lawful confinement in any State is necessary for the purpose of obtaining evidence in any proceeding before the court under this Act, the court may issue an order directed to the Superintendent or other officer in charge of the prison or place where the person is confined requiring him to produce the person at the time and place specified in the order.

(2) Any order made under this section may be served upon the Superintendent or officer to whom it is directed in whatever State he may be and he shall thereupon produce in such custody as he thinks fit the person referred to in the order at the time and place specified therein.

(3) The court before which any person is produced in accordance with an order issued under paragraph (b) of subsection (1) of this section may make such order as to the costs of compliance with this order as to the court seems just.

481. When any summons, subpoena, notice or other process has under the provisions of this Chapter been served out of the State in which it was issued such service may be proved-

(a) by affidavit sworn before any magistrate or justice of the peace having jurisdiction in the State in which such service was effected; or

(b) in any manner in which such service might have been proved if it has been effected within the State in which the summons, subpoena, notice or process was issued.

482. (1) Where a court, a Judge, a magistrate or a justice of the peace of any State has in accordance with this Act, issued a warrant for the apprehension of a person, a magistrate of another State being a State in or on his way to which the person against whom the warrant has been issued is or is supposed to be, shall, on being satisfied that the warrant was issued by the court, Judge, magistrate or justice of the peace, make an endorsement on the warrant in the form, or to the effect of the form, in the Fifth Schedule authorising its execution in that other State.

(2) A warrant so endorsed is sufficient authority to the person bringing the warrant, to all police officers and persons to whom the warrant is directed and to all police officers in that other State to execute the warrant in that other State, to apprehend the person against whom the warrant was issued and to bring that person before a magistrate of that State.

(3) The magistrate before whom the person is brought shall-

(a) by warrant under his hand, order the person to be returned to the State in which the original warrant was issued and, for that purpose, to be delivered into the custody of the person bringing the warrant or of a police officer or other person to whom the warrant was originally directed; or

(b) where the offence charged is an offence in respect of which he may admit a person to bail, admit the person to bail, on such recognisances as he thinks fit, on condition that the person appears at such time (not exceeding one month after the date of the order admitting him to bail) and at such place in the State in which the original warrant was issued as the magistrate specifies to answer the charge or complaint or to be dealt with according to law.

(4) The magistrate before whom the person is brought has, for the purposes of this section, the same power to remand the person and admit him to bail for that purpose as he has in the case of persons apprehended under warrants issued by him.

483. (1) Where a person is arrested without a warrant in a State or part of the Federation and there is in that State no magistrate who has jurisdiction with respect to the offence with which the person apprehended is charged the person apprehended shall be taken as soon as practicable before a magistrate of a State who has such jurisdiction:

Provided that if the person apprehended cannot be taken before a magistrate who has jurisdiction within twenty-four hours of his arrest and is then detained in custody he shall

be taken as soon as practicable before a magistrate of the State in which he was arrested and such magistrate shall-

(a) by warrant under his hand, order the person to be returned to the State in which there is a magistrate who has jurisdiction with respect to the offence and for that purpose to be delivered into the custody of a police officer or other person by whom he was arrested; or

(b) where the offence charged is an offence in respect of which he may admit a person to bail, admit the person to bail, on such recognisances as he thinks fit, on condition that the person appears at such time (not exceeding one month after the date of the order admitting him to bail) and at such place in the State in which a magistrate has jurisdiction with respect to the offence charged as may be specified in the order to answer the charge or complaint or be dealt with according to law.

(2) A magistrate before whom a person is brought has, for the purposes of this section, the same power to remand the person and admit him to bail for that purpose as he has in the case of persons arrested under warrants issued by him.

484. (1) Where a person apprehended is dissatisfied with an order made under subsection (3) of section 482 of this Act, or under subsection (1) of section 483 of this Act, he may apply to a Judge of the High Court of the State in which he was apprehended for a review of the order and the Judge may review the order.

(2) A Judge to whom an application is made for the review of an order may-

(a) except where the offence charged is an offence in respect of which bail may not be granted, order the release on bail of the apprehended person on such terms and conditions as the Judge thinks fit; or

(b) direct that the apprehended person be kept in such custody as the Judge directs in the State in which the person is apprehended until the order has been reviewed.

(3) The review of the order shall be by way of rehearing, and evidence in addition to, or in substitution for, the evidence given on the making of the order may be given on or in connection with the review.

(4) Upon the review of an order the Judge may-

(a) confirm or vary the order or substitute a new order, or

(i) the charge is of a trivial nature, or

(ii) the application for the return of the person has not been made in good faith in the interests of justice, or

(iii) for any reason it would be unjust or oppressive to return the person either at all or until the expiration of a certain period, order the discharge of the person or order that the person be returned after the expiration of a period specified in the order and that he be released on bail until the expiration of that period.

(5) For the purposes of this section-

(a) a Judge has the same power to admit a person to bail as he has in the case of persons apprehended under warrants issued by him or by any magistrate or justice of the peace of the State in which he exercises jurisdiction;

(b) a Judge, in varying an order relating to admittance to bail or substituting a new order admitting a person to bail, may impose terms requiring the person apprehended to return to the State in which the original warrant was issued within such time (whether more or less than one month after the making of the order) as he thinks fit.

485. (1) Where a person has, in pursuance of section 482, 483 or 484 of this Act, been admitted to bail in a State, and a magistrate for that State, or where the person was admitted to bail by a Judge of the High Court of that State, a Judge of that court, is satisfied that the person has failed to comply with the conditions of the recognisance upon which he was so admitted to bail, that magistrate or Judge may declare the recognisance to be forfeited.

(2) Where a recognisance is so declared to be forfeited payment of any sum due under the recognisance by a person residing in the State in which the recognisance was declared to be forfeited may be enforced in the same manner as a recognisance entered into in that State in accordance with the provisions of Chapters 1 to 11 of this Act.

(3) An amount recovered in pursuance of this section shall be transmitted to the principal officer of the Treasury of the State in which the original warrant was issued.

486. (1) Where a court of a State has in accordance with Chapters 1 to 11 of this Act, issued a warrant of distress, a magistrate of another State being a State in which any money or goods of the person against whom the warrant is issued are or are suppose to be, may, on being satisfied that the warrant was issued by the court, make an endorsement on the warrant in the form or to the effect of the form in the Fifth Schedule authorising its execution in that other State.

(2) A warrant so endorsed may be executed by the same persons, in the same manner and to the same extent as a warrant of distress issued by the court by which it was endorsed.

(3) The amount recovered under a warrant endorsed, after deduction of the proper costs and charges of the execution and any sum payable to any person upon whose goods the distress was levied, shall be transmitted to the court by which the original warrant was issued.

486A. (Inserted by L.N. 156 of 1960, deleted by L.N. 112 of 1964.)

487 In the application of this Act and any instrument made under this Act to the States of Nigeria formerly known as Western Region and the Eastern Region, a reference to the Attorney-General of the State or the Solicitor-General of the State shall mean the Director of Public Prosecutions of the State, and a reference to the law officers of the State shall not include the Attorney-General or the Solicitor-General of the State but shall mean the Director of Public Prosecutions.

488. Inserted by L.N. 155 of 1960, deleted by L.N. 112 of 1964.

First Schedule
Forms