

DISTRICT.				TU HOI. 東海 (Continued.)			
Yun Shan	—	—	—	南	山	—	—
Kák Ch'ái Tan	—	—	—	隔	柴	—	—
Long Mi	—	—	—	尾	墩	—	—
Ngong Wo	—	—	—	昂	窩	—	—
Pak T'ám	—	—	—	北	潭	—	—
Ch'áp Chuh Wán	—	—	—	插	灣	—	—
She T'au	—	—	—	蛇	頭	—	—
Wong Chuk Shán	—	—	—	黃	竹	—	—
2 SUB-DISTRICT.				CHEUNG MUK T'AU 樟木頭			
Villages.				Names of Committee.			
Tsing T'au	—	—	—	井	頭	—	—
Tái Tung	—	—	—	大	洞	—	—
Tái Tung Mi	—	—	—	大	洞	—	—
Tsia Ha	—	—	—	下	坑	—	—
Kun Háng	—	—	—	官	坑	—	—
Nai Ch'ung	—	—	—	泥	涌	—	—
Sai Káng	—	—	—	西	巡	—	—
Ap Ma Liu	—	—	—	鴨	麻	—	—
Yung Shü Áu	—	—	—	榕	樹	—	—
Cheung Muk T'au	—	—	—	樟	木	—	—
Ú K'ai Sha	—	—	—	烏	溪	—	—
Sai Áu	—	—	—	西	澳	—	—
Ma Ku Lám	—	—	—	馬	牯	—	—
K'i Ling Ha	—	—	—	岐	嶺	—	—
3 SUB-DISTRICT.				KÓ T'ONG. 高塘			
Villages.				Names of Committee.			
Kó T'ong	—	—	—	高	塘	—	—
Pák Sha Áu	—	—	—	白	沙	—	—
Nám Shán Ts'ün	—	—	—	南	山	—	—
Lai Chi Chong	—	—	—	荔	枝	—	—
Sham Ch'ung	—	—	—	深	涌	—	—
Tái T'án	—	—	—	大	灘	—	—
Ha Yeung	—	—	—	下	洋	—	—
Hoi Ha	—	—	—	海	下	—	—
4 SUB-DISTRICT.				CH'IK KÁNG 赤巡			
Villages.				Names of Committee.			
Ch'ik Káng	—	—	—	赤	巡	—	—
Sai Wán	—	—	—	西	灣	—	—
Tái Long	—	—	—	大	浪	—	—
Cheung Uk Wai	—	—	—	張	屋	—	—
Tán Ka Wán	—	—	—	蛋	家	—	—

GOVERNMENT NOTIFICATION.--No. 388

His Excellency the Governor has given his assent, in the name and on behalf of the QUEEN, to the following Ordinances passed by the Legislative Council:—

- Ordinance No. 13 of 1899.—An Ordinance to consolidate and amend the Laws relating to Criminal Procedure in the Supreme Court.
- Ordinance No. 14 of 1899.—An Ordinance for the Naturalization of Ts'OI YEUK-SHÁN.
- Ordinance No. 15 of 1899.—An Ordinance for the Naturalization of FAN NANG, alias FAN SAU, alias FAN PAT SHAN, alias FAN TUN SHIN.
- Ordinance No. 16 of 1899.—An Ordinance to further amend the Public Health Ordinance, 1887.

By Command,

J. H. STEWART LOCKHART,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 8th July, 1899.

No. 13 OF 1899.

An Ordinance to consolidate and amend the
Laws relating to Criminal Procedure in the
Supreme Court.

(LS) HENRY A. BLAKE,
Governor.

[7th July, 1899.]

BE it enacted by the Governor of Hongkong, with the
advice and consent of the Legislative Council thereof, as
follows:—

1. This Ordinance may be cited for all purposes as the Short title.
Criminal Procedure Ordinance, 1898.

2. In this Ordinance, unless the context otherwise re- Interpreta-
tion of terms.
quires,— Drafted.

“The Court” means the Supreme Court of the Colony
acting in the exercise of its criminal jurisdiction :

“A Judge” or “the Judge” means a Judge of the
Court :

“The Registrar” means the Registrar of the Court
and includes a Deputy Registrar :

“The Bailiff” means the Bailiff of the Court and
includes any deputy of the Bailiff :

“Indictment” includes any criminal information triable
by a jury :

“Keeper of the Prison” means the Superintendent of
Victoria Gaol and includes the superintendent or
other chief officer of any other prison, by whatever
name he may be called :

“Property” includes goods, chattels, money, valuable
securities, and every other matter or thing, whether
real or personal, upon or with reference to which any
offence may be committed.

3. Unless the contrary is expressly provided by or is to Application of
the Ordi-
nance.
B. G. Ordi-
nance, s. 4.
be implied from any statute relating to such proceedings,
the provisions of this Ordinance shall extend and apply to
all proceedings which may be taken after the commence-
ment of this Ordinance in respect of indictable offences,
whether such offences are constituted before, or at the time
of, or after the commencement of this Ordinance.

PART I.

BUSINESS OF THE COURT.

4. The Registrar of the Court shall *ex officio* be “Master Master of
Crown Office.
No. 2 of 1869,
s. 11.
of the Crown Office” within this Colony.

5.—(1.) The ordinary sessions for the despatch of the Ordinary and
special
sessions of the
Court in its
criminal
jurisdiction.
No. 2 of 1869,
s. 2.
business of the Court shall commence on the eighteenth
day of every month, or, if the eighteenth day is a *dies non*,
then on the lawful day next following: Provided always
that the Chief Justice may, upon due notice thereof being
given, from time to time change the day so appointed.

(2.) The Chief Justice may direct a special session of
the Court to be held, in addition to the ordinary sessions,
whenever it may appear to him necessary or expedient to
do so, and such special session shall be held accordingly.

6. The Keeper of the Prison shall, by himself or his Bringing of
prisoners
before the
Court for trial.
B. G. Ordi-
nance, s. 11.
deputy, be in attendance at each session of the Court, and
shall bring each prisoner awaiting trial before the Court
when his case is called for trial, and during the continuance
of the trial shall have him under his charge and custody,
and from time to time remand him to prison, by permission
or order of the Court, during the progress of the trial or on
any adjournment thereof.

Bringing of certain classes of prisoners before the Court for delivery.

B. G. Ordinance, s. 14.

7.—(1.) The Keeper of the Prison shall, by himself or his deputy, on the first day of every session of the Court, deliver in open Court to the presiding Judge a correct list of all persons in his custody upon any charge of an indictable offence who have not been then tried, or upon whom sentence has not been then passed, or who have been committed in default of sureties to keep the peace or otherwise, distinguishing, as accurately as may be, their names, ages, and sexes, with the dates of their respective commitments, and the authority under which they were respectively committed.

(2.) The Keeper shall also, by himself or his deputy, bring and produce in open Court, on such days and times of such session as the Court may direct, all such persons in his custody as aforesaid as the Court may direct him so to bring and produce.

Assistance to be given by Police.

B. G. Ordinance, s. 11. (2.)

8. The Police shall afford such assistance as may be necessary to enable the Keeper of the Prison to comply with the requirements of the last two preceding sections.

Prisoners entitled to be discharged.

B. G. Ordinance, s. 15.

9. At the conclusion of every session of the Court, the Court shall discharge all prisoners not under sentence remaining in any Prison who, by the law of this Colony for the time being in force, and, in default of such provisions and so far as the same may not extend, by the law of England for the time being in force, would be then entitled to their discharge upon gaol delivery, and also all other accused persons committed for trial at such session and remaining untried who, by the said law, would be entitled to such discharge; and the Court may also discharge all prisoners remaining in any Prison in default of sureties to keep the peace who, in the opinion of the Court, ought to be so discharged.

Procedure of the Court in matters not provided for.

B. G. Ordinance, s. 17. See also *Vol. 12 of 1873, s. 9.*

10. Subject to the provisions of this Ordinance and of any other statute for the time being in force, the practice and procedure of the Court shall be, as nearly as possible, the same as the practice and procedure for the time being in force in criminal causes and matters in the High Court of Justice and the Courts of Assize in England.

PART II.

PROCEEDINGS PRELIMINARY TO TRIAL.

Transmission of documents relating to case.

B. G. Ordinance, s. 70.

11.—(1.) The following documents together with a certified copy thereof shall, as soon as may be after the committal of the accused person, be transmitted by the Magistrate to the Crown Solicitor for the use of the Attorney General, that is to say, the information, if any, the warrant of apprehension, if any, the depositions of the witnesses, the documentary exhibits thereto, the statement of the accused person, and the record of his examination, if any, and the recognizances entered into.

(2.) A certified copy of all such documents shall, either at the same time or as soon as possible thereafter, be transmitted by the Magistrate to the Registrar for the use of the Court.

(3.) All exhibits, other than documentary exhibits, shall, unless the Magistrate otherwise directs, be taken charge of by the Police, and shall be produced by them at the trial.

(4.) The transmission of documents provided for by this section shall be in substitution for the transmission thereof to the Registrar as at present provided by law.

Referring back of Case.

Power to the Attorney General to refer back case to be dealt with summarily.

B. G. Ordinance, s. 73. See *No. 2 of 1869, s. 9.*

12. If, after the receipt of the documents relating to the case, the Attorney General is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the Attorney General may, if he thinks fit, at any time after such receipt, refer back such documents to the Magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.

Power to the Attorney General to refer back case for further inquiry.

B. G. Ordinance, s. 73. See *No. 2 of 1869, s. 9.*

13.—(1.) At any time after the receipt of the documents relating to the case and before the trial of the accused person, the Attorney General may, if he thinks fit, refer back such documents to the Magistrate with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with such other directions as he may think proper.

(2.) Subject to any express directions which may be given by the Attorney General, the effect of any such

reference back to the Magistrate shall be that the inquiry shall be re-opened and dealt with in all respects as if the accused person had not been committed for trial.

14.—(1.) Any direction given by the Attorney General under either of the last two preceding sections shall be in writing signed by him. Further provisions as to referring back of case. B. G. Ordinance, s. 74.

(2.) The Attorney General may at any time add to, alter, or revoke any such direction. B. G. Ordinance, s. 74.

(3.) A copy of any such directions shall be forthwith transmitted by the Attorney General to the Registrar, and shall be filed by the Registrar with the copy of the documents in the case, if any, transmitted to him by the Magistrate.

(4.) When the Attorney General directs that a case shall be dealt with summarily under section 12, or that an inquiry shall be re-opened under section 13, the following provisions shall have effect, that is to say,—

(a.) Where the accused person is in custody, the Magistrate may, by an order in writing under his hand, direct the Keeper of the Prison to convey him or cause him to be conveyed to the place where such proceedings are to be held for the purpose of being dealt with as the Magistrate may direct;

(b.) Where the accused person is on bail, the Magistrate shall issue a summons for his attendance at the time and place when and where such proceedings are to be held; and

(c.) Thereafter the proceedings shall be continued under the provisions of Part III or of Part IV of the Magistrates Ordinance, 1890, as the case may be. No. 10 of 1890.

Bail.

15. The Court or a Judge may at any time, on the application of any accused person, order such person, whether he has been committed for trial or not, to be admitted to bail, and the recognizance of bail may, if the order so directs, be taken before any Magistrate or Justice of the Peace. Power to the Court or Judge to bail accused person. B. G. Ordinance, s. 81.

Institution of Proceedings.

16. On receipt of the documents relating to the case, the Attorney General, if he sees fit to institute criminal proceedings, shall institute such proceedings in the Court against the accused person as to him may seem legal and proper. Institution of proceedings by the Attorney General. B. G. Ordinance, s. 110.

17. The Attorney General shall not be bound to prosecute an accused person in any case in which he may be of opinion that the interests of public justice do not require his interference. Right of the Attorney General not to prosecute. B. G. Ordinance, s. 111.

Indictment.

18.—(1.) Every indictment shall be signed by the Attorney General, and shall bear date on the day when it is signed. Signing and form of indictment. No. 2 of 1869, ss. 3 and 5.

(2.) Every indictment may be in the form contained in the First Schedule to this Ordinance, with such additions and modifications as may be necessary to adapt it to the circumstances of the particular case. First Schedule: Form No. 1.

19.—(1.) Any number of counts for any offences whatever may be joined in the same indictment, and shall be sufficiently distinguished: Provided that to a count charging murder no count charging any offence other than murder shall be joined. Joinder of counts and proceedings thereon. B. G. Ordinance, s. 101. See No. 3 of 1869, s. 7.

(2.) Where there are more counts than one in an indictment, each count may be treated as a separate indictment.

(3.) If the Court thinks it conducive to the ends of justice to do so, it may direct that the accused person shall be tried upon any one or more of such counts separately. Such order may be made either before or in the course of the trial, and, if it is made in the course of the trial, the jury shall be discharged from giving a verdict upon the counts on which the trial is not to proceed. The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been contained in a separate indictment: Provided that, unless there are special reasons for so doing, no order shall be made preventing the trial at the same time of any number of distinct charges of larceny, or of embezzlement, or of larceny and embezzlement, not exceeding three, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not.

(4.) If one sentence is passed upon any verdict of guilty on an indictment containing more counts than one, the sentence shall be good if any of the counts upon which such verdict has been returned would have justified such sentence.

20. In any indictment for an offence committed on the high seas, at sea, or in any place over which the jurisdiction of the Court to hear and determine the case, an allegation that the person injured, as, at the offence charged, in the peace of the Queen shall be sufficient allegation of the jurisdiction of the Court to hear and determine the case.

Allegation in case of offence committed on high seas or in foreign parts. No. 3 of 1865, s. 8.

21. In any indictment in which it is necessary to make an averment as to any money or any note of the Bank of England or of any other bank, it shall be sufficient to describe such money or bank note simply as money without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed, or the particular nature of the bank note, is not proved, and, in cases of embezzling or obtaining money or bank notes by false pretences, by proof that the accused person embezzled or obtained any piece of coin or any bank note, or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the person delivering the same, or to any other person, and such part has been returned accordingly.

Averment as to money or bank note. No. 2 of 1869, s. 6.

22.—(1.) In any indictment for stealing, embezzling, destroying, or concealing, or for obtaining by false pretences, any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, or otherwise describing the same or the value thereof.

Description of instrument in indictment. 14 & 15 Vict. c. 100, ss. 5 and 7.

(2.) In all other cases where it is necessary to make an averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof.

23. In any indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, declaration, affidavit, deposition, petition, answer, notice, certificate, or other writing, it shall be sufficient to set forth the substance of the offence with which the accused person is charged and by what court or before whom the oath, affirmation, declaration, affidavit, deposition, petition, answer, notice, certificate, or other writing was taken, made, signed, or subscribed, without setting forth the petition, answer, information, indictment, declaration, or any part of any proceeding, and without setting forth the commission or authority of the court or person before which or whom such offence was committed.

Indictment for perjury. 14 & 15 Vict. c. 100, s. 20.

24. In any indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to commit wilful and corrupt perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take, make, sign, or subscribe any oath, affirmation, declaration, affidavit, deposition, petition, answer, notice, certificate, or other writing, it shall be sufficient, wherever such perjury or other offence aforesaid has been actually committed, to allege the offence of the person who actually committed such perjury or other offence in the manner hereinbefore mentioned, and then to allege that the accused person unlawfully, wilfully, and corruptly did cause and procure the said person to commit the said offence, in manner and form aforesaid; and wherever such perjury or other offence aforesaid has not been actually committed, it shall be sufficient to set forth the substance of the offence with which the accused person is charged without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

Indictment for subornation of perjury. 14 & 15 Vict. c. 100, s. 21.

25. In any count charging the accused person with having been previously convicted, it shall be sufficient to state that the accused person was, at a certain time and place, convicted of an offence punishable on summary

Charge of previous conviction. B. G. Ordinance, s. 103.

conviction or of a felony or misdemeanor, as the case may be, without further describing the offence.

26. No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, or for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name, or for wanting to state the time at which the offence was committed in any case where time is not of the essence of the offence, or for stating the time imperfectly, or for stating the offence to have been committed on a day subsequent to that of the indictment, or on an impossible day, or on a day that never happened, or for want of any statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence.

General provision as to matters not necessary to be alleged, etc. No. 5 of 1872, s. 2.

27. It shall be lawful for the Judge to order further particulars of any charge to be delivered, in any case in which he deems it expedient to do so.

Power to order further particulars. No. 3 of 1865, s. 6.

Filing and Service of Indictment.

28. Every indictment, when so signed as aforesaid, shall be brought to the Office of the Registrar and shall be filed by him in the Court.

Filing of indictment. No. 3 of 1865, s. 9.

29.—(1.) The Registrar shall endorse on or annex to every indictment and every copy thereof delivered for service a notice of trial, and such notice shall specify the particular session at which the accused person will be brought to trial on the indictment and the date of the commencement thereof.

Endorsement of notice of trial. No. 3 of 1865, s. 10.

(2.) The notice may be in the form contained in the First Schedule to this Ordinance or as near thereto as circumstances will admit.

First Schedule: Form No. 2.

30. The Registrar shall deliver or cause to be delivered to the Bailiff a copy of the indictment, with the notice of trial endorsed on the same or annexed thereto; and, if there are more accused persons than one, then as many copies as there are persons.

Delivery of copy for service. No. 3 of 1865, s. 11.

31.—(1.) The Bailiff shall, as soon as may be after having received any copy of the indictment and notice of trial, deliver to the accused person the said copy and notice.

Service of copy. No. 3 of 1865, s. 12.

(2.) In any case where the accused person cannot be found, the Bailiff shall leave the said copy and notice with some one of his household for him at his dwelling-house, or with some one of his clerks for him at his counting house or place of business, and, if none such can be found, shall affix the said copy and notice to the outer or principal door of his dwelling-house.

(3.) The Bailiff shall, at the time of service, explain to the accused person, or to the person, if any, with whom the said copy and notice are left, the nature and exigency thereof.

32. The Bailiff shall forthwith transmit to the Registrar a return in writing, signed by him, of the time and mode of service of the said copy and notice.

Return of service. No. 3 of 1865, s. 14.

Plea.

33. In any plea of autrefois convict or autrefois acquit it shall be sufficient for the accused person to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.

Form of plea of autrefois convict or acquit. No. 3 of 1865, s. 22.

Inspection of Property, etc.

34. Either party shall be at liberty to apply to the Court or a Judge for a rule or order for the inspection, by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the issue; and it shall be lawful for the Court or Judge, if it or he thinks fit, to make such rule or order, upon such terms as to costs and otherwise as the Court or Judge may direct.

Inspection of property by party or witnesses. No. 3 of 1865, s. 31.

35. It shall be lawful for the Court or a Judge to make such rules or orders as may be necessary to procure the attendance of a special or common jury for the trial of any case depending in the Court, at such time and place and in such manner as the Court or Judge may think fit.

Rule or order for attendance of jury. No. 3 of 1865, s. 32.

Witnesses.

36.—(1.) The *subpœna*, or process of the Court for procuring the attendance of any person to give evidence in any case who has not been bound by recognizance to appear before the Court to give evidence in such case, or

Suing out of *subpœna* for witness. No. 3 of 1865, s. 17.

where the production of documents is required the *subpœna duces tecum*, shall be sued out of the Registrar's Office by the Crown Solicitor, or, where the prosecution is at the instance of a private person, by the prosecutor or his attorney, or by the accused person or his attorney, as the case may be.

(2.) Every such *subpœna* shall be issued in the name of the Queen, and shall be tested in the name of the Chief Justice.

No. 3 of 1865,
s. 18.

(3.) The names of four witnesses may be inserted in one *subpœna*, and they shall be described therein with such certainty that the Bailiff may be able readily to find them; and the form of the *subpœna* shall, as near as may be, be according to the like form used in the Supreme Court in civil cases.

No. 23 of 1863,
s. 1.

(4.) The party obtaining the *subpœna* shall at the same time make out and give to the Registrar as many copies as there are persons to be served therewith, and the Registrar shall deliver the original, together with the copies, to the Bailiff for service.

Payments to
be made by
private
prosecutor for
service, etc.

No. 3 of 1865,
s. 19.

37. When the prosecution is at the instance of a private person, such person or some one on his behalf shall, at the time of obtaining the *subpœna*, pay into the Registry the lawful costs and charges for executing the same, together with such further sum or sums of money as such person intends the Bailiff to give or tender to the witnesses respectively for their travelling expenses.

Service of
subpœna.

No. 3 of 1865,
s. 20.

38.—(1.) The Bailiff shall, as soon as may be after having received any *subpœna* and copy, deliver to the person named in the *subpœna* the said copy.

(2.) In any case where such person cannot be found, the Bailiff shall leave the said copy with some one of his household for him at his dwelling-house, or with some one of his clerks for him at his counting-house or place of business.

(3.) The Bailiff shall, at the time of service, show to such person, or to the person with whom the said copy is left, as the case may be, the original *subpœna* and explain to him the nature and exigency thereof.

Return of
service.

No. 3 of 1865,
s. 20.

39. The Bailiff shall, at or immediately after the time of service, endorse on or annex to the original *subpœna* a return in writing, signed by him, of the time and mode of service, and shall forthwith transmit the same to the Registrar.

Non-attend-
ance of wit-
ness at ad-
journd trial.

B. G. Ord-
nance, s. 127.

40. Every witness who is present when the trial of a case is adjourned, or who has been duly notified of the time to which such trial or further trial is so adjourned, shall be bound to attend at such time, and, in default of so doing, may be dealt with in the same manner as if he had failed to attend before the Court in obedience to a *subpœna* to attend and give evidence.

Procedure
with respect
to witnesses
where trial is
postponed:

B. G. Ord-
nance, s. 128.

41.—(1.) Where the trial of any case is postponed from one session of the Court to another session, it shall be lawful for the Court to respite the recognizance of every witness who was bound by recognizance to attend at such first-mentioned session, and every such witness shall be bound to attend and give evidence at such other session, without entering into any fresh recognizance for that purpose, in such and the same manner as if he were originally bound by his recognizance to attend and give evidence at such other session.

(2.) The Registrar shall deliver or cause to be delivered to every witness in any case so postponed a notice in writing informing him of the day on which the session of the Court to which the case is postponed will commence.

PART III.

PROCEEDINGS AT TRIAL.

Mode of Trial.

General mode
of trial.
B. G. Ord-
nance, s. 83.

42.—(1.) Every person to be tried before the Court shall be tried on an indictment.

(2.) Subject to the provisions of the next succeeding section, such trial shall be had by and before a Judge and a jury constituted under any statute for the time being in force relating to juries.

Trial at bar.
B. G. Ord-
nance, s. 86.

43. On motion made by the Attorney General, a Judge shall order that the trial of any indictment shall be had at bar, that is to say, by and before the two Judges of the Court and a jury constituted under any statute for the time being

in force relating to juries, and such trial shall be had accordingly.

44.—(1.) Nothing in this Ordinance shall affect the right of the Attorney General to file an information in the Court against any person for misdemeanor.

Saving of right of the Attorney General to file information for misdemeanor.

(2.) Subject to the provisions of this Ordinance or of any other statute for the time being in force, the law, practice, and procedure in respect of any such information shall be, as nearly as may be, the same as the law, practice, and procedure for the time being in force in relation to informations filed by the Attorney General of England in the High Court of Justice in England, so far as such law, practice, and procedure are applicable to the circumstances of this Colony.

B. G. Ordinance, s. 87.

Default of Appearance.

45.—(1.) If in any case, after notice of trial has been given, no person appears in Court to prosecute or prefer the indictment before the close of the session of the Court for which such notice was given, it shall be competent for the accused person to move the Court to discharge him therefrom; and if he, or any other person on his behalf, has been bound by recognizance for his appearance so to take his trial, then that the said recognizance may be discharged.

Proceedings on non-appearance of prosecutor.

(2.) Where the prosecution is at the instance of a private person, it shall also be competent for the accused person to move the Court that the prosecutor and his sureties, if any, shall be called on their recognizances, and, in default of his appearance, that the same may be estreated.

(3.) On any such application the Court shall make such order as it may think just.

No. 3 of 1865, s. 16.

46.—(1.) Where it appears by the return made by the Bailiff that the copy of the indictment and notice of trial has been duly served, and the accused person, on being thrice called on the day appointed for trial, does not appear, a motion may be made on behalf of the prosecution, if the accused person has been admitted to bail, that he and his sureties, if any, may be called upon their recognizances, and, in default of his appearance, that the same may be estreated.

Proceedings on non-appearance of accused person.

(2.) On any such application the Court shall make such order as it may think just.

47. Where any person against whom an indictment has been duly preferred, and who is then at large, does not appear to plead to such indictment, whether he is under recognizance to appear or not, the Court may issue a warrant for his apprehension.

Apprehension of accused person not appearing.

48. After the commencement of this Ordinance, outlawry in criminal cases shall be abolished.

Abolition of outlawry.

49. If the accused person is at the time confined for some other cause in any Prison, the Court or a Judge may, by order in writing, without writ of *habeas corpus*, direct the Keeper of such Prison to bring up the body of such person, as often as may be required, for the purpose of the trial, and the Keeper shall obey such order.

Bringing up of accused person in custody for other cause.

Arraignment.

50.—(1.) The accused person shall be placed at the bar unfettered and not in prison clothes, unless the Court sees cause to direct otherwise.

Arraignment of accused person.

(2.) The indictment shall then be read over to him by the Registrar, and explained, if necessary, by the Registrar or the interpreter of the Court; and he shall be required to plead instantly thereto, unless he objects to the want of due service of the indictment and notice of trial, and the Court finds that he has not been duly served therewith.

51. The accused person, upon being arraigned, by pleading generally the plea of "Not Guilty," shall, by such plea, without further form, be deemed to have put himself upon the country for trial.

Effect of plea of "Not Guilty."

52. If an accused person, upon being arraigned, stands mute of malice or will not answer directly to the indictment, the Court shall, if it thinks fit, order the Registrar to enter a plea of "Not Guilty" on behalf of such accused person; and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same.

Procedure where accused person on arraignment does not answer directly.

Procedure on indictment containing count charging previous conviction.

B. G. Ordinance, s. 136.

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

Objection of substance to indictment.

B. G. Ordinance, s. 103.

54.—(1.) After the commencement of this Ordinance, no objection to an indictment shall be taken by way of demurrer, but if an indictment does not state in substance an indictable offence or states an offence not triable by the Court, the accused person may move the Court to quash it or in arrest of judgment.

(2.) If such motion is made before the accused person pleads, the Court shall either quash the indictment or amend it, if it thinks that it ought to be amended.

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

(4.) If the indictment is quashed, the Court may, if it thinks fit, direct the accused person to be detained in custody until the termination of the session or to be released on bail, and may order him to plead to another indictment when called on at the same session of the Court.

Amendment.

Variations and amendments.

B. G. Ordinance, s. 94. See also 11 & 12 Vict. c. 46, s. 4; 14 & 15 Vict. c. 100, s. 1; and No. 3 of 1855, s. 24.

55.—(1.) If, on the trial of any indictment, there appears to be a variance between the proof and the charge in the indictment or in any count in it, either as preferred or as amended, the Court may amend the indictment or any count in it, so as to make it conformable with the proof. If the Court is of opinion that the accused person has not been misled or prejudiced in his defence by such variance, it shall make such amendment.

(2.) If it appears that there is in the indictment, or in any count in it, an omission to state or a defective statement of anything requisite to constitute the offence, or an omission to negative any exception which ought to have been negatived, but that the matter omitted or deficient is proved by the evidence, the Court shall, if it is of opinion that the accused person has not been misled or prejudiced in his defence by such omission, or defective statement, amend the indictment or count by inserting in it the matter omitted or deficient.

(3.) The trial in either of these cases may then proceed in all respects as if the indictment or count had been originally framed as amended: Provided that, if the Court is of opinion that the accused person has been misled or prejudiced in his defence by any such variance, or omission, or defective statement as aforesaid, but that the effect of such misleading or prejudice might be removed by adjourning or postponing the trial, the Court may, in its discretion, make the amendment and adjourn the trial to a future day, or discharge the jury and postpone the trial, on such terms as it may think just.

(4.) In determining whether the accused person has been misled or prejudiced in his defence or not, the Court shall consider the contents of the depositions, as well as the other circumstances of the case.

Proceedings on making of amendment.

B. G. Ordinance, s. 95. 14 & 15 Vict. c. 100, s. 2.

56.—(1.) In any case where an amendment is made, the order for the amendment shall be endorsed on the indictment and be entered in the Minute Book of the Court.

(2.) Every verdict and judgment which may be given after the making of any amendment shall be of the same force and effect in all respects as if the indictment had been originally in the same form in which it was after such amendment was made.

(3.) If it becomes necessary at any time for any purpose to draw up a formal record in any case where an amendment has been made, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

No. 5 of 182, s. 1.

Conviction for Offence other than that charged.

57. If, on any trial for any felony, except murder or manslaughter, where the indictment alleges that the accused person did cut, stab, or wound any person, the jury are satisfied that the accused person is guilty of the cutting, stabbing, or wounding charged in the indictment, but are not satisfied that he is guilty of the felony charged in the indictment, then and in every such case the jury may acquit the accused person of such felony, and find him guilty of unlawfully cutting, stabbing, or wounding, and thereupon the accused person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanor of cutting, stabbing, or wounding.

Conviction for wounding on indictment for felonious wounding.
14 & 15 Vict. c. 19, s. 5.

58. If, on any trial for robbery, the jury are satisfied that the accused person is guilty of an assault with intent to rob, but are not satisfied that he is guilty of the robbery charged in the indictment, then and in every such case the jury may acquit the accused person of such robbery, and find him guilty of an assault with intent to rob, and thereupon the accused person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob.

Conviction for assault with intent to rob on indictment for robbery.
No. 3 of 1865, s. 34.

59. If, on any trial for burglary, stealing in a dwelling-house, or breaking and entering and stealing in a shop, warehouse, or counting-house or in a building within the curtilage of a dwelling-house, the jury are satisfied that the accused person is guilty of some one of the said offences but are not satisfied that he is guilty of the offence charged in the indictment, then and in every such case the jury may acquit the accused person of the offence charged in the indictment, and find him guilty of the said other offence, and thereupon the accused person shall be liable to be punished in the same manner as if he had been convicted upon an indictment charging him with such other offence.

Conviction for burglary on indictment for stealing in dwelling-house, etc.
No. 3 of 1865, s. 36.

60. If, on any trial for any offence, the jury are satisfied that the accused person is guilty of an attempt to commit the offence charged in the indictment, but are not satisfied that he is guilty of the full offence so charged, then and in every such case the jury may acquit the accused person of such offence, and find him guilty of an attempt to commit the same, and thereupon the accused person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit such offence.

Conviction for attempt on indictment for full offence.
No. 3 of 1865, s. 33.

61. If, on any trial for misdemeanor; the facts given in evidence amount to a felony, the accused person shall not be therefore acquitted of such misdemeanor; and no person tried for such misdemeanor shall be liable afterwards to be prosecuted for felony on the same facts, unless the Court thinks fit in its discretion to discharge the jury from giving any verdict on such trial and to direct the accused person to be prosecuted for felony, in which case the accused person may be dealt with as if he had not been previously put on his trial for misdemeanor.

Conviction for misdemeanors although fact in evidence amount to felony.
No. 3 of 1865, s. 35.

Proof of certain Matters.

62. Where an indictment contains a count charging the accused person with having been previously convicted, and it becomes necessary on the trial to prove such previous conviction, a copy of the conviction for the offence punishable on summary conviction, or a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the indictable offence, as the case may be, purporting to be signed by the officer having the custody of the records of the Court where the offender was convicted, shall, on proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Proof of previous conviction of accused person.
7 & 8 Geo. 4, c. 28, s. 11.

63. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any indictable offence, purporting to be signed by the Registrar, shall, on the trial of any indictment for perjury or subornation of perjury, be sufficient evidence of the trial of the said indictment, without proof of the signature or official character of the person appearing to have signed the same.

Proof of previous trial on trial for perjury.
14 & 15 Vict. c. 100, s. 22.

Proof of guilty knowledge on indictment for receiving property knowing it to have been stolen.
No. 3 of 1889, s. 18.

64.—(1.) On the trial of any person for having received property knowing it to be stolen, or for having in his possession stolen property, evidence may be given that there was found in the possession of the accused person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that the accused person knew the property in respect of which he is then being tried to be stolen.

(2.) Where, on the trial of any person for having received property knowing it to be stolen, or for having in his possession stolen property, evidence has been given that the stolen property was found in his possession, then, if the accused person has, within five years immediately preceding, been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given, and may be taken into consideration for the purpose of proving that the accused person knew the property which was found in his possession to have been stolen; provided that not less than seven days' notice in writing has been given to the accused person that proof is intended to be given of such previous conviction; and it shall not be necessary for the purposes of this section to charge in the indictment the previous conviction of the accused person.

Proof on trial of plea of autrefois convict or acquit.
B. G. Ordinance, s. 107.

65. On the trial of an issue on a plea of autrefois convict or autrefois acquit, the depositions transmitted to the Registrar or the Attorney General on the former trial, together with the Judge's notes, if available, and the depositions transmitted to the Attorney General on the subsequent charge, shall be admissible in evidence to prove or disprove the identity of the charges.

Case punishable on Summary Conviction.

Procedure where person is committed for trial through error.
B. G. Ordinance, s. 147.

66.—(1.) If, either before or during the trial of an accused person, it appears to the Court that such person has been guilty of an offence punishable on summary conviction, the Court may either order that the case shall be remitted to a Magistrate with such directions as it may think proper, or allow the case to proceed, and, in case of conviction, impose such punishment upon the person so convicted as might have been imposed by a Magistrate and as the Court may deem proper.

(2.) It shall be the duty of the Magistrate to whom any such directions are addressed to obey the same.

Verdict and Judgment.

Special provision for saving validity of verdict in cases of larceny, etc.
B. G. Ordinance, s. 162.

67.—(1.) No verdict of any jury against any person, and no sentence of the Court on any person, who is found guilty of larceny, embezzlement, fraudulent application or disposition of anything, or obtaining anything by false pretences, shall be set aside or reversed, if on the trial there was evidence to prove that such person committed any one of such offences.

(2.) The punishment awarded against such person shall not exceed the punishment which could have been awarded for the offence actually committed, according to the proper legal designation thereof, and no person so convicted shall be liable to be afterwards prosecuted for any such offence upon the same facts.

Prohibition of staying of judgment on specified grounds.
No. 3 of 1865, s. 37.

68. No judgment shall be stayed or reversed—

- (1.) On the ground of any objection which, if stated before the jury were empanelled or during the progress of the trial, might have been amended by the Court; or
- (2.) Because of any error committed in summoning or swearing the jury or any of them; or
- (3.) Because any person who has served upon the jury has not been returned by the Registrar; or
- (4.) Because of any objection which might have been stated as a ground of challenge of any of the jurors; or
- (5.) Because of any informality in swearing the witnesses or any of them.

Cumulative sentences.
Sec 7 & 8 Geo. 4, s. 28, s. 10.

69. Where the Court sentences any person to undergo a term of imprisonment for an offence, and such person is already undergoing, or has been at the same session of the Court sentenced to undergo imprisonment for another offence, it shall be lawful for the Court to direct that such imprisonment shall commence at the expiration of the term

of imprisonment which such person is then undergoing, or has been so previously sentenced to undergo, as aforesaid.

70. No confession, verdict, inquest, conviction, or judgment of or for any treason, or felony, or *felo de se* shall cause any attainder or corruption of blood or any forfeiture or escheat.

Abolition of attainder.
33 & 34 Vict.
c. 23, s. 1.

71. In any case where the trial of an accused person is postponed, it shall be lawful for the Court to respite the recognizance of the accused person and his surety or sureties, if any, accordingly; and in such case the accused person shall be bound to appear to be tried at the time and place to which such trial may be postponed, without entering into any fresh recognizance for that purpose, in such and the same manner, and with the same consequences in all respects, as if he was originally bound by his recognizance to appear and be tried at the time and place to which such trial has been so postponed.

Effect on recognizance of postponement of trial.
B. G. Ordinance, s. 168.

Costs and Compensation.

72.—(1.) It shall be lawful for the Court, if it thinks fit, on the conviction of any person for an indictable offence, in addition to such sentence as may otherwise by law be passed, to condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted.

Power to the Court to award costs against person convicted of indictable offence.
33 & 34 Vict.
c. 23, s. 2.

(2.) The payment of such costs and expenses 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 enforced at the instance of any person liable to pay or who may have paid the same in such and the same manner as the payment of any costs ordered to be paid by the judgment or order of the Supreme Court in any civil suit or proceeding may for the time being be enforced: Provided that in the meantime and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this Ordinance had not been passed; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

73.—(1.) It shall be lawful for the Court if it thinks fit, on the application of any person aggrieved, and immediately after the conviction of any person for an indictable offence, to award any sum of money, not exceeding five hundred dollars, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said offence.

Power to the Court to award compensation to person defrauded or injured by commission of indictable offence.

(2.) The amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so convicted, and the order for payment of such amount may be enforced in such and the same manner as in the case of any costs or expenses ordered by the Court to be paid under the last preceding section.

33 & 34 Vict.
c. 23, s. 4.

Arraignment and Trial of Insane Person.

74.—(1.) If an accused person appears, either before or on arraignment, to be insane, the Court may order a jury to be empanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether such person is or is not insane and unfit to take his trial.

Procedure where accused person appears on arraignment, or during trial, to be insane.

(2.) If, during the trial of an accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury charged with the indictment to be insane, the Court shall in such case direct the jury to abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that such person is insane: Provided that a verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he was indicted, in case he subsequently becomes of sound mind.

B. G. Ordinance, s. 174.

Special verdict where accused person found guilty, but insane at time of act or omission charged. **75.** Where in an indictment any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible, according to law, for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused person was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did or made the same.

46 & 47 Vict.
c. 38, s. 2 (1.)

Provision for custody of accused person found insane. **76.**—(1.) Where any person is found to be insane under the provisions of section 75 or has a special verdict found against him under the provisions of the last preceding section, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until Her Majesty's pleasure shall be known.

B. G. Ordinance, s. 176;
46 & 47 Vict.
c. 38, s. 2 (2.)

(2.) The Judge shall immediately report the finding of the jury and the detention of such person to the Governor, who shall order such person to be dealt with as a lunatic under the laws of this Colony for the time being in force for the care and custody of lunatics, or otherwise as he may think proper.

Sentence of Death upon pregnant Woman.

Motion in arrest of execution by pregnant woman sentenced to death. **77.**—(1.) If sentence of death is passed upon any woman, she may move in arrest of execution on the ground that she is pregnant. If such a motion is made, the Court shall direct two or more duly qualified medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not. If, upon the report of any of them, it appears to the Court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered.

B. G. Ordinance, s. 164.

(2.) After the commencement of this Ordinance, no jury *de ventre inspiciendo* shall be empanelled or sworn in any such case.

PART IV.

PROCEEDINGS SUBSEQUENT TO TRIAL.

Reservation of Question of Law.

Power to reserve question of law for consideration of the Full Court. **78.**—(1.) The Judge may in his discretion reserve for the consideration of the Full Court any question of law which may arise upon the trial of any indictment, and, in case the accused person is convicted, may postpone judgment until such question has been considered and decided, and in the meanwhile may commit the person convicted to prison or take a recognizance of bail, with or without one or more sufficient sureties and in such sum as he may think fit, conditioned to appear at such time or times as he may direct and receive judgment.

No. 2 of 1869,
s. 8; No. 12 of
1872, s. 18.

(2.) Upon the consideration of the question so reserved, it shall be lawful for the Full Court either to affirm or to quash the conviction, and to make such other orders as may be necessary to give effect to their decision.

Restitution of Property.

Restitution of property in case of conviction. **79.**—(1.) Subject as hereinafter provided, where any person is convicted of an indictable offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the Court to be delivered to the person who appears to the Court to be entitled thereto.

B. G. Ordinance, s. 215.

(2.) Where any person is convicted before the Court of having stolen or dishonestly obtained any property and it appears to the Court that the same has been pawned to a pawnbroker or other person, the Court may order the delivery thereof to the person who appears to the Court to be the owner, either on payment or without payment to the pawnbroker or other person of the amount of the loan or any part thereof, as to the Court, according to the conduct of the owner and the pawn broker or other person and the other circumstances of the case, may seem just. If the person in whose favour any such order is made the pays

money to the pawn broker or other person under such order, and obtains the property, he shall not afterwards question the validity of the pawn; but, save to that extent, no order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property or right of action in respect to property existing or acquired in the goods either before or after the offence was committed.

(3.) Nothing in this section shall prevent any Magistrate or the Court from ordering the return to any person charged with an indictable offence, or to any person named by the Court, of any property found in the possession of the person so charged or in the possession of any other person for him, or of any portion thereof, if the Magistrate or the Court is of opinion that such property or portion thereof can be returned consistently with the interests of justice and with the safe custody or otherwise of the person so charged.

80. Where any person is convicted of larceny or of any other offence which includes the stealing of any property, and it appears to the Court that the convicted person has sold the stolen property to any person and that the purchaser had no knowledge that the same was stolen, and any moneys have been taken from the convicted person on his apprehension, it shall be lawful for the Court, on the application of the purchaser and on the restitution of the stolen property to the person injured, to order that, out of such moneys, a sum not exceeding the proceeds of the sale be delivered to the purchaser.

Restitution of stolen property by purchaser thereof.
30 & 31 Vic. c. 33, s. 9.

Calendar of Sentences.

81.—(1.) As soon as conveniently may be after the conclusion of each session, a copy of the calendar of sentences under the hand of a Judge and the seal of the Court shall be transmitted by the Registrar to the Colonial Secretary.

Transmission and effect of calendar of sentences after each session.

(2.) A similar copy shall also be transmitted by the Registrar to the Keeper of the Prison who shall record the same, and such calendar shall be a sufficient warrant for receiving and detaining all prisoners named therein, and for carrying into effect all sentences set forth therein, other than sentences of death.

Straits Sett. Ord. No. 6 of 1873, ss. 89, 90.

(3.) In the event of the copy of a calendar kept by the Keeper of the Prison being lost or destroyed, a fresh copy, signed and sealed as above mentioned, shall be delivered by the Registrar to the Keeper and shall have the same effect as the copy first given to that officer.

82.—(1.) At the end of each day's sitting of the Court in every session the Registrar shall deliver to the Keeper of the Prison or his deputy a certificate, in the form contained in the First Schedule to this Ordinance, of all sentences passed by the Court during that day.

Delivery and effect of certificate of sentences after each day's sitting.

(2.) Such certificate shall be a sufficient warrant to the Keeper for receiving into his custody all prisoners named therein, and for carrying into effect all sentences described therein, other than sentences of death, until the calendar of sentences for that session is received by him.

Ib., ss. 91, 92. First Schedule: Form No. 3.

Undergoing Sentence, etc.

83. Where any person convicted of any felony not punishable with death has endured or shall endure the punishment to which he has been or may be sentenced for the same, the punishment so endured has and shall have the like effects and consequences as a pardon under the Public Seal of the Colony as to the felony whereof the offender was or may be so convicted: Provided that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

Effect of undergoing sentence for felony not punishable with death.
9 Geo. 4, c. 32, s. 3.

84. When any case has been finally disposed of, the Crown Solicitor shall deliver to the Registrar all the original documents in the case which have been transmitted to him by the Magistrate, and such documents shall be filed in the Office of the Registrar or otherwise dealt with as the Court may direct.

Filing of original documents.
B. G. Ordinance, s. 172.

PART V.

MISCELLANEOUS PROVISIONS.

Ownership of Property.

85.—(1.) Where, in any document in any proceeding under this Ordinance, it is necessary to state the ownership of any property which belongs to or is in the posses-

Mode of stating ownership of

property of partners, etc.
B. G. Ordinance, s. 200.
See 7 Geo. 4, c. 64, s. 11.

sion of more than one person, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named and another or others, as the case may be.

(2.) Where, in any such document, it is necessary to mention, for any purpose whatsoever, any partners or other joint owners or possessors, it shall be sufficient to describe them in manner aforesaid.

(3.) The provisions of this section shall be construed to extend to all joint stock companies and associations, societies, and trustees.

Mode of stating ownership of church, etc.
B. G. Ordinance, s. 201.

86. Where, in any document in any proceeding under this Ordinance, it is necessary to state the ownership of any church, chapel, or building set apart for religious worship, or of anything belonging to or being in the same, it shall be sufficient to state that such church, chapel, or building, or such thing is the property of the clergyman, or of the officiating minister, or of the church body or of the churchwardens of such church, chapel, or building, without its being necessary to name him or them.

Mode of stating ownership of public property.
7 Geo. 4, c. 64, ss. 15, 16.

87. Where, in any document in any proceeding under this Ordinance, it is necessary to state the ownership of any work or building made, erected, or maintained, either in whole or in part, at the expense of the Government of the Colony, or of any city, town, or village thereof, or of anything belonging to or being in or used in relation to the same, or of anything provided for the use of the poor or of any public institution or establishment, or of any materials or tools provided or used for making, altering, or repairing any such work or building or any public road or highway, or of any other property whatsoever of such Government as aforesaid, it shall be sufficient to state that such property is the property of the Government of the Colony, or of the city, town, or village, as the case may be, without naming any of such inhabitants.

Criminal remedies of married woman against her husband and others in respect of property.
45 & 46 Viet. c. 75, s. 12.

88.—(1.) Every married woman, whether married before or after the commencement of this Ordinance, shall have in her own name against all persons whatsoever, including her husband (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.

(2.) In any indictment or other proceeding under this section, it shall be sufficient to allege the property to which the indictment or other proceeding relates to be the property of the married woman, and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided that no proceeding shall be taken by any wife against her husband by virtue of this section, while they are living together, as to or concerning any property claimed by her, or, while they are living apart, as to or concerning any act done by the husband, while they were living together, concerning property claimed by the wife, unless such property has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Criminal liability of wife to husband.
45 & 46 Viet. c. 75, s. 16.

89. A wife who does any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under the last preceding section, shall in like manner be liable to criminal proceedings by her husband.

Apprehension of Offenders.

Summary apprehension of offender in certain cases.
B. G. Ordinance, s. 205.

90.—(1.) Any person who is found committing any indictable offence may be apprehended by any person whatsoever, without warrant.

(2.) Any person whatsoever may, without warrant, arrest any person on a charge of having committed an indictable offence, if such an offence has actually been committed or if the person arrested is being pursued by hue and cry, but not otherwise.

(3.) Any person to whom any property is offered to be sold, pawned, or delivered, and who has reasonable ground to suspect that any indictable offence has been or is about to be committed on or with respect to such property, may, and, if he can, shall, without warrant, apprehend the person offering the same and take possession of the property so offered.

(4.) Every person who finds any person in possession of any property which he, on reasonable grounds, suspects to have been obtained by means of an indictable offence, may arrest such last-mentioned person without warrant, and take possession of the property.

(5.) Every person who arrests any person under any of the provisions herein contained shall (if the person making the arrest is not himself a peace officer) deliver the person so arrested and the property, if any, taken possession of by him, to some police or other constable, in order that he may be conveyed as soon as reasonably may be before a Magistrate, to be by him dealt with according to law, or himself convey him before a Magistrate as soon as reasonably may be for that purpose.

(6.) Nothing in this section shall affect the powers of apprehension conferred upon constables or other persons by any other statute for the time being in force.

Seizure of Property.

91. Any Magistrate or the Court may order the seizure of any property which there is reason to believe has been obtained by, or is the proceeds of, any indictable offence, or into which the proceeds of any indictable offence have been converted, and may direct that the same shall be kept or sold, and that the same, or the proceeds thereof, if sold, shall be held as he or it directs, until some person establishes, to his or its satisfaction, a right thereto. If no person establishes such a right within twelve months from the seizure, such property, or the proceeds thereof, shall become vested in the Colonial Treasurer for the public use of the Colony, and shall be disposed of accordingly.

Seizure of property the proceeds of indictable offence.
B. G. Ordinance, s. 210.

92. Any Magistrate or 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 indictable offence, and may direct the same to be held and dealt with in the same manner as property seized under the last preceding section.

Seizure of things intended to be used in commission of indictable offence.
B. G. Ordinance, s. 211.

93. An order made under either of the last two preceding sections may be enforced by a search warrant.

Enforcement of order of seizure.
B. G. Ordinance, s. 212.

94. If, on the apprehension of any person charged with an indictable offence, any property is taken from him, a report shall be made by the Police to the Magistrate or the Court of the fact of such property having been taken from such person and of the particulars of such property.

Report of property found upon person apprehended.
B. G. Ordinance, s. 213.

95. If, on the apprehension of any person charged with an indictable offence, any money is taken from him, the Court may, in its discretion, in case of the conviction of such person, order such money or any part thereof to be applied to the payment of any costs, or costs and compensation, directed to be paid by such person.

Application of money found upon person apprehended.
B. G. Ordinance, s. 214.

Probation of First Offenders.

96.—(1.) Where any person is convicted of larceny, or of embezzlement, or of obtaining anything by false pretences, or of any other indictable offence punishable with not more than two years' imprisonment and no previous conviction is proved against him, if it appears to the Court that, regard being had to the youth, character, or antecedents of the offender, to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without a surety or sureties, and during such period as the Court may direct, to appear for sentence when called upon, and in the meantime to keep the peace and be of good behaviour.

Power to the Court to release first offender on probation of good conduct.
50 & 51 Vict. c. 25, s. 1.

(2.) In any case the Court may, if it thinks fit, order the offender to pay such compensation, not exceeding fifty dollars, and such costs of the proceedings, or either of them, as the Court may think reasonable, and such compensation shall be payable to such person as the Court may direct.

97.—(1.) If, in any such case, any Magistrate or the Court is satisfied, by an information in writing and upon oath, that the offender has failed to observe any of the

Procedure in case of offender

failing to observe conditions of his recognizance.

59 & 51 Viet. c. 25, s. 2.

conditions of his recognizance, such Magistrate or the Court may issue a warrant for his apprehension.

(2.) An offender, when apprehended on any such warrant, shall, if not brought forthwith before the Court, be brought before a Magistrate, and the Court or Magistrate may either remand him, by warrant, until the time at which he was required by his recognizance to appear for sentence or until the next session of the Court, or may direct him to be released upon his entering into a recognizance, with or without a surety or sureties, conditioned for his appearance to receive sentence.

(3.) An offender, when remanded on any such warrant, may be committed to prison, and the warrant of remand shall order that he be brought before the Court to be dealt with according to law.

Conditions as to abode of offender, etc.

50 & 51 Viet. c. 25, s. 3.

98. The Court, before directing the release of an offender under section 96, shall be satisfied that the sureties, if any, have fixed places of abode or regular occupation in the Colony.

Enforcing Recognizance.

Preparation of list of persons making default on recognizance.

B. G. Ordinance, s. 220. See 7 Geo. 4, c. 64, s. 31.

99.—(1.) The Registrar shall, before the close of the last day's sitting of the Court on each occasion of its session, make out a list of all persons bound by recognizance to appear or to do any other thing, or who have been bound for the appearance of any other person or for his doing any other thing, at the said session of the Court, and who have made default, or whose principal, or other person for whom they are so bound, has made default to appear or to do such other thing at the said session of the Court; and the Registrar shall, if he is able to do so, state the cause why such default has been made.

(2.) The list so made out shall be examined, and, if necessary, corrected, and signed by the Judge, and shall be delivered by the Registrar to the Bailiff.

Issue of writ of execution.

B. G. Ordinance, s. 221.

100. A writ of execution shall be issued from the Office of the Registrar against every such person who is liable on a recognizance in respect of any such default, and shall be delivered to the Bailiff; and such writ shall be the authority of the Bailiff for levying and recovering such forfeited recognizance on the real and personal property of such person, and for taking into custody the body of such person, in case sufficient real or personal property is not found whereon levy may be made.

Apprehension and detention of person making default where recognizance is unsatisfied.

B. G. Ordinance, s. 222.

101. Every person who is arrested under the provisions of the last preceding section shall be committed to prison and be there kept until the next session of the Court, there to abide the decision of the Court, unless in the meantime the forfeited recognizance, or a sum of money in lieu or satisfaction thereof, is paid, together with all costs and expenses in consequence of his arrest and detention: Provided that if any person so arrested and imprisoned gives to the Bailiff good and sufficient bail for his appearance at the next session of the Court, to abide the decision of the Court, and for the payment of the forfeited recognizance or of a sum of money in lieu or satisfaction thereof, together with such costs as may be awarded by the Court, then it shall be lawful for the Bailiff, and he is hereby required, forthwith to cause such person to be discharged out of custody.

Failure of such person when released to appear at next session of the Court.

B. G. Ordinance, s. 223.

102. If such person fails to appear at the next session of the Court in pursuance of his undertaking in that behalf, the Court may order that a writ of execution be issued from the Office of the Registrar against the surety or sureties of the person so bound as aforesaid, and such writ shall be delivered to the Bailiff, who shall proceed as therein directed: Provided that the Court may, in its discretion, order the discharge of the whole or any part of the forfeited recognizance, or of the sum of money paid or to be paid in lieu or satisfaction thereof.

Fines, Forfeitures, and Contempts.

Proceedings against person or authority by the Court.

B. G. Ordinance, s. 224.

103.—(1.) The Bailiff shall, without further warrant or authority, arrest any person upon whom any fine has been imposed by the Court, or by whom any forfeiture has been incurred and who is adjudged to pay the same by the Court, and such person shall thereupon be detained in custody in a Prison until the fine or forfeiture imposed on

or incurred by him is paid and satisfied, together with all costs and expenses in consequence of such arrest and detention: Provided that no such imprisonment shall exceed twelve months in duration: Provided, also, that a Judge may at any time order the discharge of any such prisoner.

(2.) The return of the Bailiff, or of the Keeper of the Prison, to any writ of *habeas corpus* of an arrest or detainer under any judgment or order of the Court for non-payment of any fine or forfeiture imposed or incurred as aforesaid, shall be deemed sufficient in law, provided there appears in or is attached to such return a certificate by the Registrar, setting forth the judgment or order by virtue of which such arrest or detainer was made.

(3.) The Court or a Judge shall have power to reduce or remit any fine or forfeiture imposed by the Court, or incurred by any person in respect of the Court, at any time within three months after such fine or forfeiture has been imposed or incurred, provided such fine or forfeiture has not been already paid or satisfied.

Pardon.

104. Any Magistrate or the Court may, with the consent in writing of the Attorney General, order that a pardon be granted to any person accused or suspected of, or committed for trial for, any indictable offence, on condition of his giving full and true evidence on any preliminary inquiry or any trial; and such order shall have effect as a pardon by the Governor, but may be withdrawn by the Magistrate or the Court on proof satisfying him or it that such person has withheld evidence or given false evidence.

Power to the Court to grant conditional pardon.
B. G. Ordinance, s. 226.

105. In every case where either a free or conditional pardon is granted to any person, the discharge of the offender in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the same effect as a pardon has in the like cases under the Public Seal of the Colony.

Effect of pardon.
7 and 8 Geo. 4, c. 28 s. 13.

106.—(1.) Whenever the Governor, in the name and on behalf of Her Majesty, is pleased to grant to any offender a pardon under the Public Seal of the Colony, or to issue any warrant for the commutation of any sentence of death, the Registrar shall be bound, on the direction of the Governor, to record such pardon or warrant in a book to be kept by him for that purpose, and to endorse such pardon or warrant with the word "Recorded" and with his signature.

Recording of pardon.
B. G. Ordinance, s. 228.

(2.) Every such pardon and warrant shall be valid and effectual for all purposes whatsoever, and it shall be the duty of all Courts, Judges, Magistrates, officers, and others, on production thereof, to take notice of and to give effect to the same.

107. Subject as hereinbefore provided, nothing in this Ordinance shall affect Her Majesty's Royal Prerogative of Mercy or any prerogative of mercy vested in the Governor.

Saving of Royal Prerogative.
B. G. Ordinance, s. 229.

Error, etc.

108. No proceeding in error shall be taken upon any trial under the provisions of this Ordinance.

Prohibition of proceeding in error.
B. G. Ordinance, s. 232.

109. The practice and procedure in respect of any charge of or trial for treason or misprision of treason shall be, as nearly as possible, but subject to the provisions of any statute for the time being in force in the Colony relating to juries, the same as the practice and procedure in respect of a charge of or trial for a like offence for the time being in force in England.

Procedure on trial for treason.
B. G. Ordinance, s. 233.

Temporary Provisions.

110. Where in any Ordinance, or in any rule, regulation, by-law, or order, or in any other document of whatever kind, reference is made to an "information" in the Court in respect of an indictable offence, such reference shall, unless the context otherwise requires, be taken as applying to an indictment in the Court.

Interpretation of reference to information.
Drafted.

111. The enactments mentioned in the Second Schedule to this Ordinance are hereby repealed.

Repeal of enactments. Second Schedule.
No. 3 of 1855, s. 2.

Repeal of rules and orders.
No. 3 of 1865, s. 38.

112. All rules and orders of the Court which are inconsistent with the provisions of this Ordinance shall and the same are hereby declared to be of no force or effect whatsoever.

Existing proceedings.
Drafted.

113. Any proceeding relating to an indictable offence made or taken before the commencement of this Ordinance shall be proceeded with in accordance with the provisions of this Ordinance, so far as the same are not inapplicable thereto.

Passed the Legislative Council of Hongkong, this 20th day of June, 1899.

J. G. T. BUCKLE,
Clerk of Councils.

Assented to by His Excellency the Governor, the 7th day of July, 1899.

J. H. STEWART LOCKHART,
Colonial Secretary.

SCHEDULES.

THE FIRST SCHEDULE.

FORMS.

Form No. 1.

Indictment.

IN THE SUPREME COURT OF HONGKONG.

The day of 1 At the Ordinary Criminal Session of the Supreme Court holden at Victoria for the month of 1, [or, in case of a Special Session, At the Special Criminal Session of the Supreme Court holden at Victoria on the day of 1] the Court is informed by the Attorney General, on behalf of Our Lady the Queen, that A.B., on the day of 1, at in this Colony, three pairs of shoes and one waistcoat, the property of C.D., feloniously did steal, take, and carry away.
(Signed.)

Attorney General.

And if there are more counts than one, then the second and every subsequent count, if any, may, with the necessary additions and modifications, be in the following form:—

And also that the said A.B., on the day of 1, at in this Colony, three pairs of shoes and one waistcoat, the property of C.D., before then feloniously stolen, taken, and carried away, feloniously did receive and have, he, the said A.B., at the time when he so received the said three pairs of shoes and the said waistcoat as aforesaid, then well knowing the same to have been feloniously stolen, taken, and carried away.

Section 30.
No. 3 of 1865, Sch. B.

Form No. 2.

Notice of Trial of Indictment.

To A.B.

TAKE notice that you will be tried on this indictment [or on the indictment whereof this is a true copy] at the Criminal Session of the Supreme Court, to be holden at Victoria, in and for the Colony of Hongkong, on the day of 1.

(Signed.)

Registrar.

Section 83.

Form No. 3.

Certificate of Sentences.

IN THE SUPREME COURT OF HONGKONG.

To the

This is to certify that the undermentioned persons were sentenced this day to undergo the undermentioned punishments, namely,—

A.B., six months' imprisonment with hard labour.

C.D., two years' imprisonment with hard labour.

Dated this day of 1.

(Signed.)

Registrar.

THE SECOND SCHEDULE.
TABLE OF ENACTMENTS REPEALED.

Section 112.

Number and Year of Ordinance.	Title or Short Title and Date of Ordinance.	Extent of Repeal.
No. 3 of 1856.	An Ordinance to declare certain Acts of the Imperial Parliament to be in force in the Colony of Hongkong. [29th January, 1856.]	The whole.
No. 3 of 1865.	The Criminal Law Procedure Ordinance, 1865. [2nd June, 1865.]	The whole.
No. 2 of 1869.	An Ordinance to make further provision in relation to Criminal Law and Procedure. [24th September, 1869.]	The whole.
No. 5 of 1872.	An Ordinance to further amend the Law relating to Criminal Procedure. [16th May, 1872.]	The whole.
No. 23 of 1882.	An Ordinance entitled "The Criminal Procedure Ordinance, 1882." [19th December, 1882.]	The whole.
No. 8 of 1884.	An Ordinance entitled The Criminal Procedure Amendment Ordinance, 1884. [10th April, 1884.]	The whole.
No. 2 of 1889.	The Evidence Consolidation Ordinance, 1889. [18th January, 1889.]	Section 18.
No. 20 of 1896.	The Pawnbrokers Compensation Ordinance 1896.	So far as relates to the Supreme Court.

No. 14 OF 1899.

An Ordinance for the Naturalization of Ts'OI YEUK-SHÁN.

(LS)

HENRY A. BLAKE,
Governor.

[7th July, 1899.]

WHEREAS Ts'OI YEUK-SHÁN (蔡若山), a native of the village of SHEUNG CH'ÁK (上棚) in the HÉUNG SHÁN district (香山), in the province of Kwangtung, in the Empire of China, is now employed as a clerk in the Registrar General's Office, Victoria, in this Colony, and has resided in this Colony for the last four years, and has declared his intention of residing here permanently, and has petitioned to be naturalized as a British subject within the limits of this Colony, and whereas it is expedient that he should be so naturalized:

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. Ts'OI YEUK-SHÁN (蔡若山) shall be and he is hereby naturalized as a British subject within this Colony, and shall enjoy therein, but not elsewhere, all the rights, advantages and privileges of a British subject, on his taking the Oath of Allegiance under the Promissory Oaths Ordinance, 1869.

Passed the Legislative Council of Hongkong, this 27th day of June, 1899.

J. G. T. BUCKLE,
Clerk of Councils.

Assented to by His Excellency the Governor, the 7th day of July, 1899.

J. H. STEWART LOCKHART,
Colonial Secretary.

NO. 15 OF 1899.

An Ordinance for the Naturalization of FAN NANG, alias FAN SAU, alias FAN PAT SHAN, alias FAN TUN SHIN.

LS

HENRY A. BLAKE,
Governor.

[7th July, 1899.]

WHEREAS FAN NANG (范能), alias FAN SAU (范秀), alias FAN PAT SHAN (范弼臣), alias FAN TUN SHIN (范敦善), a native of Nam Hoi District (南海), in the province of Kwangtung (廣東), in the Empire of China, is now carrying on business as a piece goods merchant in the Sun Hing (信興) shop, at No. 71, Jervois Street, in this Colony, and whereas FAN NANG (范能), alias FAN SAU (范秀), alias FAN PAT SHAN (范弼臣), alias FAN TUN SHIN (范敦善), has continually resided and done business in this Colony for the last ten years, and is possessed of landed property in this Colony, and has declared his intention of residing here permanently, and has petitioned to be naturalized as a British subject within the limits of this Colony, and whereas it is expedient that he should be so naturalized:—

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Naturaliza-
tion of FAN
NANG.

1. FAN NANG (范能), alias FAN SAU (范秀), alias FAN PAT SHAN (范弼臣), alias FAN TUN SHIN (范敦善), shall be and he is hereby naturalized as a British Subject within this Colony, and shall enjoy therein, but not elsewhere, all the rights, advantages and privileges of a British subject, on his taking the Oath of Allegiance under the Promissory Oaths Ordinance, 1869.

Passed the Legislative Council of Hongkong, this 27th day of June, 1899.

J. G. T. BUCKLE,
Clerk of Councils.

Assented to by His Excellency the Governor, the 7th day of July, 1899.

J. H. STEWART LOCKHART,
Colonial Secretary.

NO. 16 OF 1899.

An Ordinance to further amend the Public Health Ordinance, 1887.

LS

HENRY A. BLAKE,
Governor.

[7th July, 1899.]

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Public Health Amendment Ordinance, 1899.

Amendment
of s. 70 of
Ord. 24 of
1887.

2. Section 70 of Ordinance 24 of 1887 is hereby amended by the substitution of the words "one week" in place of the words "one calendar month" in the first paragraph of that section.

Passed the Legislative Council of Hongkong, this 27th day of June, 1899.

J. G. T. BUCKLE,
Clerk of Councils.

Assented to by His Excellency the Governor, the 7th day of July, 1899.

J. H. STEWART LOCKHART,
Colonial Secretary.