

LAWS OF THE GILBERT ISLANDS
REVISED EDITION 1977

CHAPTER 52

MAGISTRATES' COURTS

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SCHEDULES

17 of 1977
L.N. 26/78
4 of 1981

An Ordinance to provide for the constitution of magistrates' courts, for the appointment of presiding magistrates, magistrates and other officers of these courts, and of justices of the peace, and for the regulation of their duties and jurisdiction, and for appeals and revision of the decisions of these courts, and for matters incidental thereto and connected therewith

L.N. 38/78

Commencement: 1st May 1978

PART I

PRELIMINARY

Short title
and com-
mencement
on different
dates and
places

1. (1) This Ordinance may be cited as the Magistrates' Courts Ordinance.
- (2) This Ordinance shall come into operation on such date or dates and in such places as the Governor may by notice appoint and different dates may be appointed for different places and for different provisions.

2. In this Ordinance unless the context otherwise requires— Interpretation
- “bailiff” means a person appointed to be a bailiff pursuant to section 19 and includes any assistant bailiff or any other person assisting a bailiff in the performance of his duties;
- “Chief Justice” means the judge of the High Court for the time being carrying out the functions and duties of Chief Justice;
- “Chief Lands Officer” means the Chief Lands Officer of the Gilbert Islands;
- “Chief Registrar” means the person appointed to be Chief Registrar pursuant to section 20 of this Ordinance;
- “clerk of court” and “clerk” means any person appointed to be a clerk of court pursuant to section 12 of this Ordinance and includes any assistant clerk and any other person assisting a clerk in the performance of his duties;
- “criminal” includes quasi-criminal, and with reference to matters of jurisdiction, comprehends all such matters not falling within the term “civil” or within the term “lands causes and matters”;
- “district” means a district constituted in the manner prescribed in section 3 (2);
- “island” includes any atoll and any chain of islands about a single lagoon or connected by a continuous reef formation and any place which the Chief Justice may by notice declare to be an island for the purposes of this Ordinance;
- “judgment” and “decree” shall be deemed synonymous terms;
- “land causes and matters” means all causes and matters concerning land, land boundaries and transfers of title to native land registered in the Register of Native Lands and any disputes concerning the possession and utilisation of native land, and includes causes and matters concerning native wills, native adoption, native customary fishing rights, native leases and native paternity, and all matters referred to in Part VI and sections 35 and 36 of the Native Lands Ordinance; Cap. 61
- “lands’ jurisdiction” means the jurisdiction of the magistrates’ court exercised by it when composed or deemed to be composed under the provisions of section 7 (4);
- “legal practitioner” means any person entitled to practise in the High Court in accordance with the provisions of section 22 or section 28 of the Western Pacific (Courts) Order in Council 1961; S.I. 1961/
1506
- “magistrate” means any person appointed to sit as magistrate in a magistrates’ court under section 7 or under section 10 or in the High Court under section 76 (2);

Cap. 73

"matter" includes every proceeding in a court not in a cause;

"Police Force" means the Gilbert Islands Police Force established by the Police Ordinance;

"rules of court" means rules of court made under the provisions of section 88;

"Sheriff" means any person for the time being acting as Sheriff of the High Court and includes any deputy sheriff or under sheriff and any person lawfully authorised to execute the process of the High Court or the magistrates' courts;

"suit" includes action, and means a civil proceeding or a land cause or matter commenced by writ of summons or in such other matter as may be prescribed by rules of court, and does not include a criminal proceeding;

"warrant", in relation to the establishment or jurisdiction of any magistrates' court, means the warrant appointing magistrates to such courts as provided for in section 7 and, in relation to the High Court, section 76 (2).

PART II

CONSTITUTION OF THE COURTS

Establishment
of magis-
trates' courts

3. (1) There shall be and there are hereby established courts of summary jurisdiction, which shall be known as magistrates' courts and shall be subordinate to the High Court and shall be presided over by magistrates appointed under this Ordinance and such courts, subject to the provisions of any other Ordinance, shall exercise such jurisdiction as is by this Ordinance prescribed.

(2) The Chief Justice may from time to time by order provide for the delimitation of districts for the purposes of this Ordinance and there shall be in each district such magistrates' courts as the Chief Justice may direct.

(3) Any power, authority, function or discretion vested in a magistrates' court by this or any other Ordinance or law shall be possessed and may be exercised by magistrates sitting as in this Ordinance provided.

(4) Every magistrates' court shall be a court of record.

Territorial
limits of
jurisdiction
of the courts

4. (1) Subject to any express provisions of this or any other Ordinance, every magistrates' court shall exercise jurisdiction within the limits of the district within which it is situated:

Provided that when there is more than 1 magistrates' court in the same district, the Chief Justice may direct the distribution of business between such courts.

(2) The jurisdiction of each magistrates' court shall extend over any territorial waters adjacent to the district in which it is situated as well as over lagoon and inland waters whether within or adjacent to such district.

5. Magistrates' courts shall use seals of such nature and pattern as the Chief Justice shall approve. Seals

6. Magistrates' courts have the same powers as the High Court to deal with contempt of their authority. Contempt of court

PART III

OFFICERS OF MAGISTRATES' COURTS

7. (1) Subject to the provisions of subsections (4) and (5), each magistrates' court shall be composed of 3 members who shall be known as magistrates, 1 of whom shall be the presiding magistrate, and the presiding magistrate shall take precedence of the other magistrates: Composition of magistrates' courts and appointment of magistrates

Provided that if the post of presiding magistrate is vacant, or if the presiding magistrate fails to attend any sitting of the court, the magistrate next in seniority according to his date of appointment as a magistrate shall act as presiding magistrate until a new presiding magistrate is appointed or for that sitting of the court.

(2) The Minister, on the recommendation of the Chief Justice, by warrant under his hand may appoint fit and proper persons to be the magistrates of each magistrates' court, declaring which magistrate shall be the presiding magistrate and which shall be the ordinary magistrates, and may further appoint any person or persons to be temporary magistrates for the purposes of filling any vacancy that may occur due to the temporary incapacity of a magistrate or may appoint a person to be a magistrate for the provisions of subsection (5).

(3) Save as is otherwise expressly provided in subsections (4) and (5) or by any law for the time being in force, every civil and criminal proceeding in any magistrates' court and all business arising therefrom shall be heard and determined by 3 magistrates of such court sitting together.

(4) In land causes or matters in respect of any of the subjects or matters referred to in Part VI of this Ordinance a magistrates' court shall be composed of 5 magistrates, at least 3 of whom shall be drawn from among magistrates whose names appear on the

Lands Magistrates' Panel, established pursuant to section 10, for the district in which the cause or matter arose or the land in question is situated.

(5) Notwithstanding the other provisions of this section the Chief Justice may establish in such place or places as he may, by notice, specify, a magistrates' court or courts which shall each consist of a single magistrate appointed by the Minister, on the recommendation of the Chief Justice, who shall exercise all the jurisdiction conferred upon a magistrates' court to the extent specified by the Chief Justice in civil, criminal or land causes and matters or in respect of any of the subject or matters referred to in Part VI of the Ordinance and such magistrates' court shall be deemed to be duly composed for the purposes of subsection (3) or subsection (4) or for the purposes of both subsections.

Decisions of
magistrates'
courts

8. Any decision, whether final or not, of a magistrates' court shall be that of the 3 magistrates, of the 5 magistrates or of the single magistrate as the case may be, of which such court is composed or, failing agreement between them, the decision of the majority of the magistrates of which the court is composed shall prevail.

Cancellation,
restriction or
suspension of
warrants

9. The Governor may, on the recommendation of the Chief Justice, by written notice, cancel or suspend any warrant of appointment given in pursuance of section 7 or section 10, or in like manner suspend or remove either wholly or in part any restriction of the powers to be exercised contained in such warrant.

Lands magis-
trates' panel

10. There shall be established a panel which shall be called the Lands Magistrates' Panel which shall consist of such persons as the Governor may, on the recommendation of the Chief Justice after consultation with the Chief Lands Officer, by warrant under his hand appoint as magistrates for the purpose of hearing land causes and matters and opposite the name of each such magistrate shall be entered the district in respect of which he has been appointed by such warrant.

Procedure
where magis-
trate is
unable to
adjudicate by
reason of
personal
interest, etc.

11. Where a magistrate is a party to a cause or matter or is unable from personal interest or other sufficient reason to adjudicate on any cause or matter, he shall be replaced as a magistrate during such incapacity in accordance with the provisions contained in the court's warrant for the filling of casual vacancies, or if for any reason his replacement under those provisions is not possible, the Chief Justice may direct some other magistrate to act instead of the aforesaid magistrate for the hearing and determination of such particular cause or matter.

Clerk of
court

12. (1) There shall be a clerk of court attached to each magistrates' court who shall be appointed by the Chief Justice who

shall, subject to the general supervision of the Chief Registrar, be under the immediate direction and control of the magistrates for the time being exercising the jurisdiction of the court to which he is attached.

- (2) The duties of every clerk of court shall be—
- (a) where the court or the presiding magistrate does not do so to keep true and accurate minutes of all proceedings in the court to which he is attached and to record minutes of all evidence given therein and the judgments, convictions and orders of such court;
 - (b) to fill up or cause to be filled up all summonses, warrants, orders, convictions, recognisances, writs of execution and other documents and to submit the same for the signature of the presiding magistrate for the time being of the court concerned or as may be otherwise prescribed or required;
 - (c) to issue any civil processes in accordance with the law;
 - (d) to attend all sittings of the magistrates' court;
 - (e) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of proceedings in the magistrates' court and to keep or cause to be kept true and accurate accounts of the same, and;
 - (f) to perform such other duties as may be assigned to him by the Chief Justice.

13. Any process of a magistrates' court may be executed or served by any person authorised to do so by such court, either generally or in any particular case, and such person shall for all purposes of such execution and connected therewith be an officer of the magistrates' court.

Execution
and service of
processes

14. No magistrate shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he, at the time, in good faith believed himself to have jurisdiction to do or order the act complained of; and no officer of any magistrates' court shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the court issuing the same.

Protection of
magistrates
and officers
of magis-
trates' courts

15. Every magistrates' court shall keep such written records and furnish such returns as may be required by this Ordinance or as the Chief Justice may from time to time direct.

Records and
returns

Appointment
and removal
of justices of
the peace

16. (1) The Governor, on the recommendation of the Chief Justice, may appoint any person to be justice of the peace and the Governor may remove any person so appointed from the office of justice of the peace.

(2) Every judge and every magistrate shall be *ex officio* a justice of the peace.

Powers and
functions of
justices of the
peace

17. Subject to the provisions of this and of any other Ordinance, every justice of the peace shall, subject to any exceptions which may be contained in his appointment, within the area in and for which he holds such office, have all the powers, rights and duties of a magistrate under this or any other Ordinance to—

- (i) issue summonses and warrants for the purpose of compelling the attendance of any accused person or witnesses before a court;
- (ii) such other powers and rights and shall perform such duties of magistrates as may be conferred or imposed upon him by rules of court made under this or any other Ordinance not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

Sheriff

18. (1) There shall be a Sheriff who shall be charged with the execution of all orders and processes of magistrates' courts and for this purpose shall have the same powers, authority and immunities as may be conferred upon him by the law for the time being in respect of the orders and processes of the High Court.

(2) Every duty of the Sheriff in execution of any process of the court may be performed by such officers, non-commissioned officers or constables of the Police Force, or other persons, as may be authorised by the Sheriff and any officer, non-commissioned officer, constable or other person who is in possession of any such process shall be deemed to be duly so authorised, and shall for all purposes of such execution, and connected therewith, be an officer of the court.

(3) The Sheriff shall not be liable to be sued for any act or omission of any officer, non-commissioned officer, or constable, or other person, in the execution of any process which shall have been done or may have occurred, either through disobedience or neglect of the orders or instructions given by the Sheriff, or in the absence of any order or instruction given by the Sheriff.

Bailiffs

19. Bailiffs shall be appointed by the Sheriff, with the approval of the magistrates exercising the jurisdiction of the magistrates'

court to which they are to be attached, and may themselves or by their assistants serve and execute any process issued out of the magistrates' court; and when so directed by such magistrates they shall attend such court and obey all the directions of the magistrates for preserving order and decorum therein.

20. There shall be a Chief Registrar who, subject to the overall control and direction of the Chief Justice, shall be in charge of the administration of all courts including the magistrates' courts and who shall perform such other functions and carry out such other duties as the Chief Justice may from time to time assign to him.

Chief Registrar

21. The Chief Justice may from time to time appoint such public officers as may be necessary for the efficient exercise of jurisdiction by the magistrates' courts and may attach such officers to any magistrates exercising judicial functions in a court under the provisions of this Ordinance.

Other officers

22. The Chief Justice may transfer any officer attached to any magistrates' court from time to time to any other magistrates' court either for temporary or permanent duty.

Transfer of functions

PART IV

JURISDICTION AND POWER OF THE MAGISTRATES' COURTS

23. (1) Subject to the other provisions of this Ordinance and of any other law for the time being in force, every magistrates' court shall have and exercise the jurisdiction in civil causes and matters for the time being set out in Schedule 1, in criminal causes and matters the jurisdiction for the time being set out in Schedule 2, and in land causes and matters the jurisdiction for the time being set out in Schedule 3.

Powers of magistrates' courts

Schedule 1

Schedule 2

Schedule 3

(2) The Chief Justice may by notice add to, amend or delete, any part of Schedules 1 or 2 and, after consultation with the Chief Lands Officer, may by notice add to, amend or delete, any part of Schedule 3.

(3) Subject to any law for the time being in force if in any suit or civil cause or matter before a magistrates' court composed or deemed to be composed under section 7 (3) or 7 (5) the title to any land is disputed or the question of the ownership thereof arises the court shall—

- (a) where original jurisdiction to hear and determine such dispute or question is conferred by law upon a magistrates' court composed or deemed to be composed under section 7 (4), transfer the dispute or question to that magistrates' court for adjudication or determination; or
- (b) where original jurisdiction to hear and determine such dispute or question is not conferred by law on a magistrates' court composed or deemed to be composed under section 7 (4), if all the parties interested therein consent, adjudicate thereon or, if they do not so consent, apply to the High Court to transfer such suit, cause or matter to itself or to make such order or orders as to the High Court may appear to be just.

Sentences
which magis-
trates' court
can pass

24. (1) Subject to the other provisions of this Ordinance a magistrates' court may, in any case in which such sentences are authorised by law, pass the following sentences—

- (a) imprisonment for a term not exceeding 5 years; or
- (b) a fine not exceeding \$500; or
- (c) both such imprisonment and such fine; or
- (d) any sentence or order authorised by law.

(2) A magistrates' court may pass any lawful sentence combining any of the sentences or orders which it is authorised by law to pass.

(3) In determining the extent of magistrates' courts jurisdiction under subsection (1) to pass a sentence of imprisonment the magistrates' court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided for in the subsection in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

(4) When a person is convicted at one trial of 2 or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(5) In the case of consecutive sentences imposed by a magistrates' court in respect of 2 or more distinct offences arising out of the same facts it shall not be necessary for such magistrates' court to send the offender for trial or sentence to the High Court by reason only of the aggregate punishment for the several offences in respect of which such offences are imposed being in excess of

the punishment which it is competent to impose on conviction of a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of punishment which such magistrates' court is competent to impose in respect of 1 offence in the exercise of its ordinary jurisdiction.

(6) For the purposes of appeal or review the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

(7) A magistrates' court may, in lieu of any other punishment, make an order placing an offender under the supervision of a probation officer or any other suitable person chosen by the court for that purpose for a period not exceeding 1 year and attach such conditions to the order as the court may think fit; and in the event of the offender's failure to comply with the order or of the commission of a further offence during the period of supervision, he shall appear before the magistrates' court which made such order or any other magistrates' court and may be sentenced in respect of the offence for which he was placed on probation; and any sentence then passed upon him shall be in addition to any sentence then passed upon him in respect of such further offence.

(8) Whenever a magistrates' court imposes a fine, or a sentence of which a fine forms a part, such court may, when passing judgment, order the whole or any part of such fine to be paid to any person in compensation for any loss, injury or damage caused by the offence or in defraying any expenses incurred in bringing or prosecuting the charge.

25. Notwithstanding that any charge against an accused person is proved, a magistrates' court, if it is of the opinion that it is not expedient to inflict punishment, may make an order dismissing the charge either absolutely or conditionally. Dismissal of charges

26. (1) In this section, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say— Treatment of young offenders

"child" means any person under the age of 14 years;

"young person" means a person who has attained the age of 14 years and is under the age of 17 years.

(2) No magistrates' court shall impose imprisonment on any child.

(3) No magistrates' court shall impose imprisonment on any young person unless—

- (a) he is over the apparent age of 15 years; and
- (b) unless the magistrates' court, having obtained and considered information about the circumstances of the offender and his age and character, is of the opinion that no other method of dealing with him is appropriate.

(4) No imprisonment imposed under subsection (3) shall exceed 1 month in duration.

(5) Where a child or young person is convicted by a magistrates' court of any offence for the commission of which a fine, damages or costs may be imposed, if such magistrates' court is of the 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 magistrates' court may, and, in the case of child, shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person convicted, instead of by such child or young person, unless the magistrates' court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(6) In the case of any child or young person convicted by it of any offence, a magistrates' court may order his parent or guardian to give security in some sum not exceeding \$50 for his good behaviour for any period not exceeding 1 year.

(7) A magistrates' court may require the attendance before it of any parent or guardian of any child or young person charged with an offence before the court and if such parent or guardian will not appear voluntarily may compel his attendance in like manner to that in which witnesses are compelled to attend.

(8) In lieu of any other sentences which a magistrates' court may lawfully impose on any male child or male young person, the provisions of section 24 (1) to the contrary notwithstanding, it may order that such child or young person be given a specific number of strokes of a cane not exceeding, in the case of a child, 6 strokes, and in the case of young person, 12 strokes, and any strokes so ordered shall be administered at the prison nearest such magistrates' court by the Superintendent of Prisons, or by an officer authorised by the Superintendent of Prisons, in the presence of a magistrate:

Provided that no such sentence shall be carried out or put into effect until the time within which notice or grounds of appeal against such conviction or sentence shall be filed has expired,

unless within that time notice or grounds of appeal against conviction or sentence or against both conviction and sentence has been filed, whereupon no such sentence shall be carried out until the High Court has determined the appeal and made an order accordingly or the appeal is, for any reason, discontinued, and the accused shall in the meantime be remanded in custody or on bail at the discretion of the magistrates' court.

27. Notwithstanding the provisions of section 23 (1), the Chief Justice, by order under his hand and the seal of the High Court, may authorise an increased jurisdiction in civil causes and matters to be exercised by the magistrates' court named in such order, within the district prescribed in the order and to the extent specified in the order. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

Extension of
civil jurisdiction

28. Notwithstanding the provisions of section 23 (1), the Chief Justice, by order under his hand and the seal of the High Court, may invest any magistrates' court with jurisdiction to try summarily an offence which would otherwise be beyond its jurisdiction. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

Extension of
criminal
jurisdiction

29. Where an offence over which a magistrates' court has jurisdiction is committed or any cause or matter arises in any vessel, such offence may be prosecuted or such cause or matter heard and determined either by the magistrates' court exercising jurisdiction over the place where such vessel is at the time when such offence is committed or such cause or matter arises, or by the magistrates' court exercising jurisdiction over any place where such vessel calls after such commission or arising.

Special
jurisdiction in
certain cases

30. Every magistrate shall have power to issue writs of summons for the commencement of actions in a magistrates' court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make such decrees and orders and issue such process and exercise such judicial and administrative powers in relation to the administration of justice as shall from time to time be prescribed by this or any other Ordinance, or by rules of court, or subject thereto by any special order of the Chief Justice.

General
powers of
magistrates

Acts of magistrates' courts not to be affected by error as to venue

31. (1) Subject to the provisions of any other Ordinance, no act done by or under the authority of any magistrates' court shall be void or impeachable by reason only that such act was done, or that any act, offence or matter in respect of or in relation to which such act was done, occurred or was situated beyond the area of the jurisdiction of such magistrates' court.

(2) If the defendant in any civil or lands cause or matter, before, but not after, the time when he is required to answer such cause or matter, specially alleges that any of the grounds referred to in the preceding subsection exist, which, but for the provisions of that subsection, would be of force, the court shall consider the same, and if there is *prima facie* proof thereof such court shall report such cause or matter to the Chief Justice who shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

Proceedings by or against an officer of a magistrates' court

32. Subject to the proceedings of section 11, any civil or lands proceeding by or against any magistrate or other officer of a magistrates' court for any offence recognisable by a magistrates' court may be brought in a magistrates' court in any other district.

Administration of oaths

33. (1) Every magistrate and every justice of the peace is hereby authorised to administer all oaths which may require to be taken before him in exercise of the jurisdiction and powers conferred upon him by this or any other Ordinance.

(2) Any such oath may also be administered by any clerk of court or other officer of the magistrates' court under the direction and in the presence of a magistrate.

(3) Every magistrate shall be a commissioner for oaths and shall have and may exercise the powers by law conferred thereon.

Jurisdiction of judges of High Court concurrent with that of magistrates

34. No jurisdiction conferred upon any magistrate shall in any way restrict or affect the jurisdiction of the judges of the High Court, but such judges shall have in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the several magistrates:

Provided that the judges of the High Court shall not have any first instance jurisdiction in respect of land causes and matters.

Reconciliation

35. (1) In criminal cases a magistrates' court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensa-

tion or other terms approved by such court, and may thereupon order the proceedings to be stayed or terminated.

(2) In civil and land causes and matters a magistrates' court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.

(3) Where a civil or land cause or matter is pending a magistrates' court and the officers thereof may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

36. Where the Chief Justice assigns 2 or more magistrates' courts to any district, any such magistrates' court within such district may, for good reason, at any stage of the proceedings before final judgment, transfer, within the limits of such district, any cause or matter before it to any other such magistrates' court similarly composed and such cause or matter shall be commenced from the start again, inquired into, tried and disposed of by any similarly composed magistrates' court of competent jurisdiction to whom it has been transferred as if it had been instituted before that court:

Transfer between magistrates' courts in the same district similarly composed

~~Provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular magistrates' court shall again be transferred without leave of the Chief Justice.~~

37. A magistrates' court may, of its own motion or on the application of any person concerned, report to the Chief Justice the pendency of any cause or matter which in the opinion of the presiding magistrate in such magistrates' court ought to be transferred from it to any other magistrates' court or to the High Court; and the Chief Justice shall by order direct in what mode and where the cause or matter shall be heard and determined.

A cause may be reported for transfer

38. (1) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter (other than a land cause or matter) before a magistrates' court to any other magistrates' court or to the High Court, and such cause or matter may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.

Transfer of cases by the High Court

(2) The power of transfer shall be exercised by means of an order under the hand of the Chief Justice, and may apply either to

any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such order be in dependence.

(3) The High Court may at all times correct, alter, add to or amend any order under the preceding subsection.

(4) The High Court may, if it appear expedient, in the first instance cause the contents of any such order to be telegraphed, and any such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

Effect of an order of transfer

39. (1) Every order of transfer shall operate as a stay of proceedings in the magistrates' court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of such court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

(2) An order given under section 37 or section 38 shall not be subject to appeal.

Judgment may be entered in High Court on a judgment of a magistrates' court

40. (1) A judge, if satisfied that a person, whether resident in the Gilbert Islands or not, against whom judgment for an amount exceeding \$40 has been obtained (whether by way of claim or counterclaim or costs or otherwise) in a magistrates' court other than one constituted under section 7 (4), has no goods or chattels within the Gilbert Islands which can be seized conveniently to satisfy the judgment, may if he thinks fit, and upon such terms as to costs as he may direct, by order under his hand and the seal of the High Court, remove the judgment into the High Court.

(2) Upon the removal of a judgment into the High Court in pursuance of this section no further proceedings shall be had or taken thereon in the magistrates' court and the judgment shall be entered in the High Court for the amount due and payable under the judgment of the magistrates' court together with the costs as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the High Court.

(3) This section applies to orders obtained in a magistrates' court as it applies to judgments therein obtained.

PART V

THE LAW TO BE APPLIED IN AND THE PRACTICE AND PROCEDURE OF MAGISTRATES' COURTS

41. (1) The language of each magistrates' court shall be such language as the Chief Justice shall from time to time specify by order, and where no order is made the language of the court shall be Gilbertese. Language

(2) In any proceedings in any magistrates' court in which the language spoken by any witness or party requires to be interpreted into the language of the magistrates' court, or vice versa, such magistrates' court may appoint any suitable person as interpreter.

42. (1) Subject to the provisions of this Ordinance and to any law for the time being in force in the Gilbert Islands, the civil and criminal jurisdiction of magistrates' courts shall, so far as circumstances admit, be exercised upon the principles of and in conformity with— The law to be applied in civil and criminal cases

(a) the statutes of general application in force in England on the 1st day of January 1961, and

(b) the substance of the English common law and doctrines of equity, and with the powers vested in and according to the course of procedure and practice observed by and before Courts of Justice in England, according to their respective jurisdiction and authorities:

Provided that the said common law, doctrines of equity and statutes of general application shall be in force so far only as the circumstances of the Gilbert Islands and its inhabitants and the limits of Her Majesty's jurisdiction permit and subject to such qualifications as local circumstances render necessary.

(2) Nothing in this Ordinance shall deprive any magistrates' court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any local law or custom not being repugnant to natural justice, equity and good conscience, and not incompatible either directly or by necessary implication with any Ordinance or other law for the time being in force in the Gilbert Islands.

Practice and
procedure

43. Subject to the provisions of any other law for the time being in force, the jurisdiction vested in the magistrates' courts shall be exercised (as far as regards practice and procedure) in the manner provided by this Ordinance or by any other Ordinance for the time being in force relating to criminal or civil procedure or by rules of court, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in county courts and courts of summary jurisdiction.

Sittings

44. (1) Each magistrates' court shall normally be held at the principal village on the island or in the district in which it is situated but should necessity arise, or the Chief Justice otherwise direct, it may be held at any other place within the jurisdiction.

(2) In construing this section the principal village of any island or district shall be that village where the headquarters of the local government of and for the island or district are situated, or such other village, as the Chief Justice may by notice declare in respect of any island or district to be the principal village thereof.

(3) Each magistrates' court shall be held at least once in every calendar month and shall continue sitting, with such adjournments as the courts shall deem necessary until all outstanding causes and matters have been dealt with fully:

~~Provided, however, that, subject to the provisions of this Ordinance, a sitting of a magistrates' court may be held at any time the presiding magistrate thinks fit.~~

(4) Civil and criminal matters, or either one or the other may be heard, determined and dealt with at any sitting of any magistrates' court.

(5) Land causes and matters may be heard at the same sittings as civil and criminal matters provided that the court is lawfully composed pursuant to section 7 (4) or deemed to be composed.

Adjournments

45. (1) Any magistrates' court may adjourn such court from day to day or to any convenient day.

(2) If the 1, 3, or 5 magistrates as the case may be of which any magistrates' court is composed are not present at the time and place appointed for the sitting of a magistrates' court, any magistrate or officer of the court or other person authorised in that behalf by the magistrates may, by giving public notice, oral or written, adjourn the sitting until such time and to such place as may have been communicated to him by the court, or, in the absence of any such communication, to such time and place as may be convenient, and all persons bound to be present at the

sittings so adjourned shall be equally bound to be present at the time and place appointed by such notice.

(3) When any day appointed for the sitting of a magistrates' court falls on a Sunday or a public holiday, the sitting shall not take place on that day and the magistrates shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or a public holiday) next after the day appointed for such sitting.

46. Where a magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding or matter, whether civil, criminal or in respect of land causes and matters, under any authority howsoever conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrants may be to execute the same in the same manner as if the magistrate who issued the summons or warrant had not ceased to act as such magistrate and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce, and carry to completion any proceeding or matter so commenced as aforesaid in accordance with the provisions of this Ordinance save that, except where otherwise provided by any other Ordinance for the time being in force relating to criminal or civil procedure, such magistrate shall commence the trial of any such cause or matters *ab initio*.

Completion
of process
issued

47. All sittings of the magistrates' courts shall be open to the public unless proceedings in camera or in chambers shall have been authorised by law.

Sittings to be
in public

48. All summonses, warrants, orders, convictions and recognisances and all other processes, whether civil or criminal or in respect of land causes and matters of any magistrates' court shall be issued or made under the hand of the presiding magistrate for the time being thereof:

Issue of pro-
cess

Provided that, where expressly authorised by rules of court, writs of summons and other civil process or process in land causes and matters may be issued under the hand of a clerk of court.

49. All members of the Police Force are hereby authorised and required to obey the warrants, orders and directions of a magistrates' court in the exercise of its criminal jurisdiction and, in so far as such obedience may be authorised by any Ordinance in that behalf, of its civil jurisdiction and its jurisdiction in land causes and matters.

Duty of
police to
obey magis-
trates' court

Mode of securing attendance of accused persons, parties and witnesses

50. The attendance before a magistrates' court of accused persons and witnesses in any criminal cause or matter, or of parties and witnesses in any civil or land cause or matter, shall be secured in the manner prescribed in regulations made under section 88.

Examination on oath

51. Any person attending any magistrates' court as a witness, or summoned or brought on a warrant before it for the purpose of giving evidence, in any cause may be examined or give evidence on oath in the form or with the ceremony that he declares binding on his conscience.

Records and returns

52. Every magistrates' court shall keep such written records and furnish such returns as may be required by this Ordinance or as the Chief Justice may from time to time direct.

Civil jurisdiction in criminal cases

53. (1) In addition to any other powers conferred upon a magistrates' court such a court may, when it hears a criminal case, if requested in writing by any person or persons having a civil action or claim arising out of the criminal offence, hear such person or persons and any witnesses he or they may wish to call on the civil aspect, and may permit such person or persons to cross-examine the witnesses, if any, for both the prosecution and the defence, and may, whether the accused in the criminal charge be convicted or not, make an award in damages against him within the limits of its jurisdiction and powers if in the opinion of the court the civil claim has been proved by him, or them on a balance of probabilities.

(2) The procedure to be adopted in such actions or claims shall be in the manner prescribed in regulations made under section 88.

Inspection

54. In any cause or matter or in any land cause or matter, a magistrates' court may make such order for inspection by the court, parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the court may seem fit.

No person entitled to inspection of the record of evidence

55. No person shall be entitled, as of right, at any time or for any purpose, to inspect the record of evidence given in any case before any magistrates' court, or to receive a copy of the notes of such court, save as may be expressly provided by any rules of court, or unless the leave of the presiding magistrate to make such inspection or receive such copy has been first had and obtained.

PART VI

LAND CAUSES AND MATTERS

56. In this Part unless the context otherwise requires—

Interpre-
tation

“Code” or “Lands Code” means the Gilbert and Phoenix Islands Lands Code;

“Commission” means the Native Lands Commission which was constituted under the terms of the Native Lands Commission Ordinance; ^{Cap. 20 of 1952}

“court” means a magistrates' court composed of 5 members in the manner provided in section 7 (4) or deemed to be so composed;

“leases register” means the book kept for the purpose of registering leases under section 64 (1);

“lessee” means the registered lease holder;

“native” notwithstanding the provisions of section 2 of the Native Status Ordinance means any aboriginal inhabitant of the Gilbert Islands and a descendant of any aboriginal inhabitant, whether wholly or partly of aboriginal descent, who has not acquired non-native status under the Native Status Ordinance; ^{Cap. 20 of 1973}

“native adoption” means the adoption of one native by another in accordance with native customary law;

“native land” means land owned by a native or natives;

“native lease” means a lease of native land to a native where the term of the lease does not exceed 21 years and where the land the subject of the lease does not exceed 5 acres, and includes a sub-lease;

“native will” means any will codicil or other testamentary instrument made by a native and duly attested in accordance with customary law;

“non-native” means any person other than a native;

“register of native lands” means a register of native lands established in any island of the Gilbert Islands under the provisions of the Native Lands Commission Ordinance and maintained by the magistrates' courts under the provisions of this Ordinance and means also a register compiled under the Lands Registration (Tarawa and Tabiteuea) Ordinance 1969; ^{Cap. 20 of 1952} ^{7 of 1969}

“sub-leases register” means the book kept for the purpose of registering sub-leases under 64 (1);

“title” means right, title or interest.

Persons subject to jurisdiction of magistrates' courts in lands matter

57. All persons who own or who are eligible to own native lands shall be subject to the jurisdiction of the magistrates' court composed as provided in subsection (4) of section 7 or deemed to be so composed.

Certain powers of court relating to land
Cap. 61

58. (1) Subject to sections 31 (1) and 33 of the Native Lands Ordinance the court shall hear and adjudicate in accordance with the provisions of the Lands Code applicable or, where the Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of title to native land registered in the register of native lands and any disputes concerning the possession and utilisation of native land.

(2) Every attempt to transfer, transmit or otherwise deal with native land except in accordance with the provisions of this section shall be null and void and of no effect.

Unregistered titles

59. The court may, subject to the approval of the Chief Lands Officer, register or cause to be registered in the register of native lands any title to native land which it finds to have existed at the time of the inquiry of the Commission held on the island but which was not registered by the Commission:

Provided that no judgment or order of the Commission shall thereby be revised or amended.

Native wills

60. The court shall be a court of probate in respect of native wills and shall have the power to adjudicate in accordance with native customary law on all cases arising from the administration, devolution and partition of native estates.

Native adoption

61. The court shall adjudicate on all cases brought before it, concerning native adoption and the conveyance of land which such adoption may entail.

Customary fishing rights

62. The court shall adjudicate on all cases brought before it, concerning the determination of native customary fishing rights.

Native leases
Cap. 61

63. (1) The court may approve or disallow all native leases as provided for in Part VI of the Native Lands Ordinance.

(2) The court may order the payment of rent or of damages for failure to perform any legal undertaking provided for in native leases and may, if necessary, enforce such order by seizure or sale of the goods of the party concerned to the amount fixed by the order, which may not, however, exceed the sum of \$250.

(3) The court may, on the application of a lessor of a native

lease and on proof that the lessee committed a breach of any of the covenants of the lease whether expressed or implied, make an order of possession in favour of the lessor on such terms as it may deem just.

64. (1) Each magistrates' court shall keep registers in the form prescribed by the Chief Justice and shall therein register or cause to be registered—^{Court registers}

- (a) all transfers of titles to land approved by the court;
- (b) titles to garden pits, ponds, fish traps and sea walls constructed with its permission subsequent to the registration of titles by the Commission;
- (c) all native wills deposited with the court;
- (d) all native adoptions approved by the court;
- (e) all native leases approved by the court.

(2) Only the Chief Justice, or a judge, the Chief Registrar, the presiding magistrate and the clerk of the court may make entries in the court registers.

(3) Each such entry shall be notified to the native lands registrar and to the Chief Lands Officer and shall make reference to the judgment or order in the court minutes on the authority of which the entry is made; and the reference shall include the number of the case or the page and number of the minute book where the judgment or order is recorded.

65. (1) If in any island or district where a magistrates' court is situated a single woman is delivered of a child, the court may summon before it that woman and all other such persons as it may think fit and may enquire into the paternity of the child.^{Paternity}

(2) Subject to anything to the contrary in the native customary law, the court make make an order regarding the paternity of the child and its future support in one of the following ways—

- (i) If the father being a native accepts the child as being his, such child shall after reaching the age of 2 reside with the father or his relations and shall in accordance with native customary law inherit land and property from his father in the same way as the father's legitimate children; or
- (ii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may transfer to the child title to any such portion of

land or other property owned by the putative father as shall be necessary for the maintenance and support of the child; and

- (iii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may if such putative father owns no land which will be of assistance in maintaining the child, order monetary maintenance up to an amount not exceeding \$2 per month or maintenance by supply of foodstuffs to be paid by the father to the mother or whoever is supporting the child, until such time as the child reaches the age of 21, or the father inherits sufficient land to allow for a transfer as provided for in paragraph (ii), and in which event a transfer shall be ordered in substitution for the order for maintenance, and any sum of money or foodstuffs due under such a maintenance order may be claimed as a civil debt in the magistrates' court.

PART VII

APPEAL FROM MAGISTRATES' COURTS IN CIVIL AND CRIMINAL MATTERS

Civil appeals

66. (1) Subject to the provisions of this or any other Ordinance or rules of court for the time being in force, an appeal shall lie from any judgment or decision, whether final or otherwise, of any magistrates' court to the High Court—

- (a) in exercise of its jurisdiction in divorce; or
(b) in any suit, civil cause or matter before it, in which the value of the property, debt or damage (whether as a balance of account or not) comprising the subject matter of the claims exceeded \$20;

but not otherwise.

(2) Subject to the provisions of any rules of court every appeal shall be in the form of a petition in writing signed by the appellant or his advocate and shall be presented to the magistrates' court from the judgment or decision of which the appeal is lodged within 21 days of the date of the judgment or decision appealed against.

(3) The High Court may, at any time, enlarge the period of limitation prescribed by this section.

67. (1) Subject to the provisions of this or any other Ordinance for the time being in force, any person convicted on a trial before any magistrates' court and who has been sentenced in respect of such conviction to—

Criminal
appeals

- (a) undergo any term of imprisonment without the option of a fine; or
- (b) pay any fine in excess of \$20; or
- (c) undergo imprisonment for a term exceeding 7 days in default of the payment of all or any part of any fine; or
- (d) undergo any corporal punishment; or
- (e) a community service order,

but not otherwise, may within 21 days of the passing of such conviction and sentence appeal to the High Court against his conviction or against such sentence except when it is one fixed by law:

Provided however that no appeal shall lie in the case of any person who has pleaded guilty and been convicted on such plea except as to the extent or legality of the sentence.

(2) In this section, "sentence" includes any order made on conviction with reference to the person so convicted.

68. Notwithstanding anything hereinbefore contained the High Court may entertain any appeal from a magistrates' court on any terms which it thinks just.

Discretionary
power of the
High Court
to entertain
appeals

69. (1) When the High Court has received the notice of any criminal appeal and the record of proceedings, the judge holding such court shall peruse the same.

Summary
dismissal of
criminal
appeals

(2) Where an appeal is brought on the ground, either so expressed or in words to the like effect, that the decision is unreasonable or cannot be supported having regard to the evidence, or that the sentence is excessive, and it appears to the judge that the evidence is sufficient to support the conviction and that there are no circumstances which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily dismissed by order of the judge certifying he has perused the record and is satisfied that the appeal has been lodged without sufficient ground of complaint.

Powers of High Court in regard to criminal appeals

70. (1) At the hearing of any criminal appeal the High Court shall hear the appellant, or his advocate, if he appear, and the High Court may thereupon confirm, reverse or vary the decision of the magistrates' court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the magistrates' court might have exercised:

Provided that the High Court may, notwithstanding that it is of the opinion that the point raised in such appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) At the hearing of any criminal appeal against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the magistrates' court and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed.

(3) If it shall appear to the High Court on hearing any criminal appeal under this Part of this Ordinance that a new trial ought to be had, it shall be lawful for such Court, if it shall think fit, to order that the decision of the magistrates' court shall be set aside and that a new trial shall be had.

Additional evidence in any criminal appeal

71. (1) In dealing with any criminal appeal under this Part, the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by any magistrates' court.

(2) When additional evidence is taken by any magistrates' court such magistrates' court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a magistrates' court.

Power of High Court in regard to civil appeal

72. (1) In any civil appeal under this Part the High Court shall have power to draw any inference of fact and to give any judgment or make any order which ought to have been made and to make such further or other order as the case may require.

(2) For all purposes of and incidental to the hearing and determination of any civil appeal under this Part and the amendment, execution or enforcement of any order, judgment or decision made thereon, the High Court shall have all the powers, authority and jurisdiction of any magistrates' court.

(3) If it shall appear to the High Court on hearing any civil appeal under this Part, that a new trial ought to be had, it shall be lawful for such Court, if it shall think fit, to order that the decision of the magistrates' court shall be set aside and that a new trial shall be had.

73. (1) It shall not be open, as of right, to any party to any civil appeal under this Part of this Ordinance to adduce new evidence in support of his original case, but a party may allege any facts essential to the issue which have come to his knowledge after the date of the judgment or decision from which the appeal is brought, which facts were not ascertainable at the trial, and may adduce evidence in support of his allegations.

Further evidence at civil appeal.

(2) The High Court may in any case, if it thinks fit, allow or require new evidence to be adduced either by oral examination in court or by affidavit.

74. In the case of any civil proceedings neither notice of appeal nor an appeal shall operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the magistrates' court which gave such judgment, or the High Court, may direct, and any such direction may be given with or without the application of either party.

Neither notice of appeal nor appeal to operate as stay of execution

PART VIII

APPEALS IN LAND CAUSES AND MATTERS

75. (1) Subject to the provisions of this or any other Ordinance or rules of court for the time being in force, an appeal shall lie from any judgment, decision or order, whether final or otherwise, of any magistrates' court, composed in pursuance of section 7 (4) or deemed to be so composed, to the High Court in any land cause or matter or in respect of any matter provided in Part VII.

Appeals in land causes and matters

(2) Subject to the provisions of any rule of court every appeal shall be in the form of a petition in writing signed by the appellant or his advocate and shall be presented to the magistrates' court from the judgment, decision or order of which the appeal is lodged within 21 days of the date of the judgment, decision or order appealed against.

(3) The High Court may, at any time, enlarge the period of limitation prescribed by this section.

High Court shall sit with magistrates

76. (1) When the High Court sits to hear and determine any appeal under the provisions of section 75 of this Ordinance the Court shall consist of the Chief Justice or a judge together with at least 2 magistrates appointed by the Chief Justice from among the magistrates whose names appear on the Lands Magistrates Appeals Panel.

(2) There shall be and there is hereby established a Land Magistrates Appeals Panel which shall consist of such persons suitably qualified to hear appeals as magistrates in land causes and matters as the Governor, on the recommendation of the Chief Justice, may by warrant appoint for such term or terms as he may see fit.

(3) The decision of the High Court constituted under the provisions of this section in any appeal before it shall be the decision of the majority so sitting.

(4) The Chief Justice or a judge or any of the magistrates sitting on any appeal under section 75 may write a decision dissenting from that of the majority of the Court.

Powers of High Court constituted under section 76

77. The powers of the High Court constituted under the provisions of section 76 (1) shall in all respects be the same as those which it would have if it consisted of the Chief Justice or a judge sitting alone.

Decisions of High Court in lands cases final

78. Decisions of the High Court constituted under the provisions of section 76 (1) shall be final and shall not be appealable to any court in or outside the Republic of Kiribati.

Civil and criminal decisions not final

79. Subject to the provisions of this or any Ordinance or rules of law an appeal shall lie against any judgment or decision of the High Court in any criminal or civil appeal other than a land cause or matter in such cases and in such manner as may be prescribed by law.

PART IX

CASES STATED AND POWERS OF REVISION.

Power to reserve question of law

80. In addition to and without prejudice to the right of appeal conferred by this Ordinance, a magistrates' court may, on its own volition or on the request of any party, reserve for the considera-

tion of the High Court on a case stated any question of law which may arise on the trial of any suit or matter and any judgment or decision in such case shall be subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

81. (1) The High Court may, either of its own motion or on the petition of any person interested therein, call for the record of any case before a magistrates' court and, either without seeing such record or after hearing argument as it may determine, exercise in the case of any criminal proceedings or in the case of any suit, civil cause or matter the powers conferred by subsections (2) and (3) respectively and in the exercise of such powers it shall have all the powers, authority and jurisdiction vested in the magistrates' court which dealt with or determined the case under review.

Review by
High Court
of magis-
trates' court
cases

(2) In the case of any criminal proceeding the High Court may—

- (a) subject to any law fixing a minimum penalty, reduce or alter the nature of but not increase a sentence; or
- (b) subject to any law requiring a particular order to be made, set aside an order or modify an order in such form as it thinks fit; or

(c) set aside the conviction, in which case the person convicted, if under detention in respect of that conviction only, shall be forthwith set at liberty, or in the case of a fine having been imposed thereon such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or

(d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted by the magistrates' court which convicted him and sentenced him accordingly; or

(e) set aside the conviction and substitute a special finding to the effect that the person convicted guilty of the act or omission charged was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be kept in custody as a criminal lunatic in such place and manner as the High Court may direct, and such special finding shall be forthwith reported for the order of the Governor who may order the person convicted to be confined in a mental

health wing, prison or other suitable place of safe custody;
or

- (f) set aside the conviction and order a new trial before the magistrates' court which made the conviction in question or any other magistrates' court; or
- (g) order further evidence to be taken either generally or on some particular point by the magistrates' court which passed the sentence or by any other magistrates' court, and order in the meantime any person who shall have been convicted to be liberated on bail or on his own recognisance; and
- (h) make such order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof under the provisions of this Ordinance relating to such appeals, the High Court shall not exercise the powers conferred by this subsection:

And provided further that nothing in this subsection shall be deemed to authorise the conversion of a finding of acquittal into one of conviction.

(3) In the case of any suit, civil cause or matter the High Court may—

- (a) set aside any judgment, decision or order made by the magistrates' court and substitute any judgment or order which ought to have been made;
- (b) direct the magistrates' court which gave the judgment or direction or made the order, or any other magistrates' court, to take further evidence either generally or on some particular point, and in the meantime order the stay of any proceedings for the execution of any judgment or order;
- (c) set aside the judgment and order a retrial before the magistrates' court which heard and determined the proceedings in question or any other magistrates' court; or
- (d) make any other order as justice may require and give all necessary and consequential directions:

Provided always when a party shall have appealed against any judgment or order under the provisions of this Ordinance relating to appeals, the High Court shall not exercise the powers conferred by this subsection.

(4) The powers conferred by this section shall not be exercised in respect of any case after the expiration of 12 months from the date of the passing of the sentence or the giving of judgment,

order or decision terminating the proceedings in such case in the magistrates' court, and in respect of which the High Court shall not up to then have taken any action.

(5) For the purpose of facilitating the exercise of the powers conferred by this section, the Chief Registrar may, by order under his hand, direct that until such time as he shall otherwise order the clerk of any magistrates' court specified therein shall, at the end of each and every month, cause to be sent to the Chief Registrar true and complete copies of a list of all causes brought before such magistrates' court during that month.

(6) In the case of criminal proceedings there shall be set out in such list the names, sex and age of each defendant, the offence with which he was charged and brief details thereof, his plea thereto, and, if convicted, the date of the conviction and the sentence or order in full.

(7) In the case of any suit, civil cause or matter there shall be set out in such list the names of the parties, the nature and subject matter of the claim and brief details of the judgments or other order made.

82. This Part shall apply to magistrates' courts composed or deemed to be composed under the provisions of section 7 (4):

Composition
of High
Court in land
causes and
matters

Provided that where a magistrates' court is so composed or deemed to be so composed the High Court shall not adjudicate upon any matter coming within the provisions of section 80 or section 81 unless it is composed as provided under section 76 (1).

PART X

MISCELLANEOUS

83. Subject to the provisions of section 15 of the Crown Proceedings Ordinance, in any suit or matter in which the Crown or any public officer in his official capacity or any department of the Government of the Gilbert Islands is a party or in any suit of matter affecting the services of the Gilbert Islands, the Crown or that officer or department may be represented by the Attorney-General, Crown Counsel, a legal practitioner or other person duly authorised in that behalf by the Governor or by the public officer in charge of the department concerned.

Representa-
tion
of Crown,
public
officers in
their official
capacity and
departments
of the Gov-
ernment
Cap. 19

84. The employment of legal practitioners shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before any magistrates' court.

Employment
of legal prac-
titioners

Fees and
costs

85. The fees and costs set forth in the rules of court made under this Ordinance or any other Ordinance for the time being in force relating to criminal, civil or land procedure may be demanded and received by the clerks of court or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned:

Provided that, in the absence of the clerk of court from any magistrates' court or in the event of there being no such clerk or other person appointed to receive such fees and costs in any such court, the presiding magistrate thereof may demand and receive such fees and costs.

By whom
fees and costs
payable

86. All fees and costs payable under or by virtue of this Ordinance shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Provided that no fees shall be payable by any public officer or public department in any case instituted by any public officer when acting in his official capacity or in any case in which the presiding magistrate endorses on the plaint, information or complaint, as the case may be, that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the presiding magistrate, be recoverable from the other party, if the decision be given against him.

All fees and
moneys
received in
magistrates'
courts to be
subject to
aforegoing
provisions

87. Sections 85 and 86 shall apply to all moneys received by a clerk of court or other person appointed to receive fees and costs in any magistrates' court under the provisions of this or any other Ordinance, whether the same be fees, costs, fines, forfeiture penalties or money paid into court for any purpose or received or recovered under or by virtue of any process of execution of distress.

Rules of
court

88. The Chief Justice may make such rules of court as may seem to him expedient for the carrying into effect of any of the objects, intentions, or provisions of this Ordinance and, without derogation from the generality of the foregoing or of any other provisions of this Ordinance relating to the making of such rules, for all or any of the following provisions—

- (a) for regulating the procedure and practice to be followed in any cause or matter;
- (b) for regulating forms to be used and all matters connected therewith;
- (c) for regulating the procedure and practice to be followed in any appeal;

- (d) for providing the form and manner in which any notice of appeal is to be given;
 - (e) for providing for the giving of security and for the payment of fees or costs in appeals in land causes and matters;
 - (f) for providing for the giving of security and for the payment of fees and costs in any civil appeal;
 - (g) for providing for the release from custody of any appellant pending the determination of any criminal appeal and for the giving of security by such appellant;
 - (h) for prescribing any fee, matter or thing which is required, or appears to be expedient, to be prescribed under or in connection with the provisions of Parts VII and VIII;
 - (i) for regulating the receipt of money paid into a magistrates' court or received or recovered under or by virtue of any process of execution or distress;
 - (j) for regulating the payment out of a magistrates' court of any money to any person entitled thereto;
 - (k) for prescribing books and forms of account to be kept or used in magistrates' courts;
 - (l) for prescribing fees, costs, amounts for service and execution of process which may be received by clerks of courts and others in connection with the practice and procedure in magistrates' courts;
-
- (m) for prescribing for the acceptance, retention and disposal of fees and costs;
 - (n) for prescribing provision for the payment of any sum, or sums, of money to persons required to attend any magistrates' court as witnesses for defraying their reasonable expenses, and allowing them reasonable compensation for their trouble and loss of time involved in any such attendance;
 - (o) after consultation with the Minister of Finance, for providing the sitting fees and other emoluments, of any of the presiding magistrates, magistrates and other officers of the magistrates' courts;
 - (p) for prescribing rules of evidence to be observed in proceedings before magistrates' courts;
 - (q) for providing for the appointment and terms and conditions of service of probation officers and for their powers, duties and functions;
 - (r) for prescribing for the procedural rules to be applied in actions and claims under section 53 (2).

SCHEDULE 1

(Section 23)

JURISDICTION IN CIVIL CAUSES AND MATTERS

1. Each magistrates' court shall have jurisdiction to entertain, hear, try, determine and otherwise deal with—

Cap. 60

- (a) any petition for divorce under the Native Divorce Ordinance or proceeding arising therefrom in which the petitioner is resident in the jurisdiction of the court and both the petitioner and the respondent are domiciled in the Gilbert Islands;
- (b) any personal suit, whether arising from contract or from tort, or both, in which the defendant is ordinarily resident within the jurisdiction of such court or in which the cause or action arose in such jurisdiction and where the value of the property debt or damage claimed (whether as a balance or account or otherwise) is under \$3000.

2. For the avoidance of possible doubt it is hereby declared that no magistrates' court shall have jurisdiction to try any case, cause or matter in respect of which original jurisdiction to hear and determine the same is conferred on a magistrates' court composed under the provisions of section 7 (4) unless such court is so composed.

SCHEDULE 2

(Section 23)

JURISDICTION IN CRIMINAL CAUSES AND MATTERS

Any magistrates' court shall, subject to the limitations imposed by this Ordinance have jurisdiction to hear, try and determine in accordance with the prescribed procedure any criminal proceedings arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the jurisdiction of such court any offence the maximum punishment for which is a fine of \$500 and 5 years' imprisonment, or any offence under the provisions of the enactments set forth below, that is to say—

Ordinance	Section or regulation in respect of which jurisdiction is conferred
(i) Any Ordinance in which such jurisdiction is expressly conferred upon a magistrates' court	
(ii) Penal Code (Cap. 67) (excluding sections 64 to 80 inclusive)	(a) All sections carrying a sentence of 5 years' imprisonment and a fine of \$500 or any lesser punishment, with the exception of the sections contained in Part VII, Part VIII and Part XVI of the Penal Code. (b) Sections 118, 254, 262, 271, 292, 293, 294, 295, 306, 307, 348 (5), 349 (1) (b) and 376 of the Penal Code.
(iii) Penal Code (sections 64 to 80 inclusive)	No section or regulation.
(iv) Any Ordinance which expressly excludes the jurisdiction of the magistrates' court	No section or regulation.

SCHEDULE 3
(Section 23)

1. Each magistrates' court composed of 5 members in pursuance of section 7 (4) or deemed to be so composed shall have jurisdiction to hear, try, determine and otherwise deal with land causes and matters.
2. In dealing with land causes and matters a magistrates' court shall, subject to sections 10 (1) and 12 of the Native Lands Ordinance, hear and adjudicate in accordance with the provisions of the Land Code applicable or, where the Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of titles to native lands registered in the registers of native lands and any disputes concerning the possession and utilisation of native land.
3. Each magistrates' court composed as in paragraph 1 hereof shall have jurisdiction to hear, try, determine and otherwise deal with the subject matter of Part VI.

Cap. 61

SUBSIDIARY LEGISLATION

[Subsidiary]

Delimitation of districts by order under section 3 (2)

DELIMITATION OF DISTRICTS ORDER

L.N. 40/78

Commencement: 1st May 1978

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| <p>1. This Order may be cited as the Delimitation of Districts Order.</p> <p>2. The Gilbert Islands shall be divided into districts, known as magisterial districts, for the purposes of the Magistrates' Courts Ordinance.</p> <p>3. There shall be ²⁵29 magisterial districts in the Gilbert Islands.</p> <p>4. (1) Subject to sub-paragraphs (2) and (3) of this paragraph each island in the Gilbert Islands with the exception of the Phoenix Islands and the Central and Southern Line Islands shall be a separate magisterial district.</p> <p>(2) The island of Tarawa shall be divided into 4 magisterial districts; Betio, Bairiki, Bikenibeu and North Tarawa.</p> <p>(3) The island of Tabiteuea shall be divided into 2 magisterial districts; Tabiteuea North and Tabiteuea South.</p> <p><i>(4) For the purposes of this Order the Phoenix Islands shall be deemed to be one island.</i></p> <p>5. (1) The magisterial district of Betio shall comprise the whole island of Betio and any causeway between Betio and Bairiki; the magisterial district of Bairiki shall comprise all the town of Bairiki and its surrounds and all the area between Bairiki and the eastern end of the Stewart Causeway; the magisterial district of Bikenibeu shall comprise all that area between the eastern end of the Stewart Causeway and the place where the areas of authority of the Teinainano Urban Council and the Teinaiaeta Council meet; the magisterial district of North Tarawa shall comprise the area of authority of the Teinaiaeta Council.</p> <p>(2) The magisterial districts of Tabiteuea North and Tabiteuea South shall be coterminous with the areas of authority of the North Tabiteuea Island Council and the South Tabiteuea Island Council respectively.</p> | <p>Citation</p> <p>Division into magisterial districts Order of 9/3/77</p> <p>Number of magisterial districts</p> <p>Each island to be magisterial district Order of 9/3/77</p> <p>Order of 9/3/77</p> <p>Limits of magisterial districts not being islands</p> |
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[Subsidiary]

Rules of court under section 88

- (1) Magistrates' Courts Rules
- (2) Magistrates' Courts (Civil Claims in Criminal Proceedings) Rules
- (3) Magistrates' Courts (Fees in Civil Cases) Rules
- (4) Magistrates' Courts (Magistrates' Sitting Fees) Rules
- (5) Magistrates' Courts (Administration of Native Estates) Rules
- (6) Magistrates' Courts (Costs in Criminal Cases) Rules
- (7) Magistrates' Courts (Fees in Land Causes and Matters) Rules
- (8) Magistrates' Courts (Prescribed Forms) Rules

L.N. 31/78

(1) MAGISTRATES' COURTS RULES*Commencement: 1st May 1978***PART I****PRELIMINARY**

Citation 1. These Rules may be cited as the Magistrates' Courts Rules and shall come into operation on the same date as the relevant section of the principal Ordinance comes into operation.

Interpretation 2. In these Rules, unless the context shall otherwise require—

“appeal” means any appeal under Part VII or Part VIII of the Ordinance;

“appellant” means a person who has appealed under Part VII or Part VIII of the Ordinance or a person who is entitled so to appeal;

“decision” means any judgment, order or decision, whether final or otherwise, and includes any sentence;

“district” means a magistrates' court district constituted as prescribed in section 4;

“record of appeal” means a record of appeal under rule 37;

“respondent” means, in the case of any criminal appeal, the prosecutor in the cause in which the decision appealed from was given, and, in the case of any civil appeal, means all parties (other than the appellant) to the cause in which the decision appealed from was given;

“sentence” has the meaning ascribed to it in section 67 (2) of the principal Ordinance.

PART II**CRIMINAL PROCEDURE**

Charge to be in writing 3. In all cases in which a complaint is made before a magistrates' court that any person has committed or is suspected of having committed any offence within its jurisdiction, such complaint shall be made on oath and shall be written down in the form of a charge by such court in the prescribed form.

Court may issue summons 4. Upon any complaint having been written down as a charge as prescribed in the preceding rule a magistrates' court may issue a summons directed to the person who committed, or is suspected of having committed, the offence referred to in such charge.

[Subsidiary]

5. A charge may be for 1 offence only but if more than 1 offence may be founded on the same facts or from or are part of a series of offences of the same or a similar character then it shall be lawful for the prosecution to include more than 1 offence in a charge against the same person or persons at the same time; and the magistrates' court hearing the charge, if it considers either before or during the trial, that the accused would be embarrassed thereby, or for any other reason, may deal with them separately.

A charge may be for more than 1 offence

6. Every summons shall be in the prescribed form and shall be in English or in the language of the court and shall be served by a police officer or other person authorised under section 18 or 19 by delivering it personally to the person to be served or, if he cannot be conveniently found, by leaving it for him with some person at his last or most usual place of abode.

Form and service of summons

7. The person who serves the summons shall either make and file an affidavit of the service in the prescribed form endorsed on a true copy of the summons served or attend before the court at the time and place mentioned therein to depose, if necessary, to the service thereof.

Proof of service of summons

8. Where a person against whom a charge is made is beyond the jurisdiction of the magistrates' court before which such charge is made, but is within the jurisdiction of another magistrates' court, it shall be lawful for the first-mentioned court, when a summons for the appearance of such person is issued and when the same has been backed by a certificate of a magistrate, that in his opinion such service is just and proper having regard to the seriousness of the offence charged, the distance which the person served may have to travel in order to appear at the time and place named in the summons, and all other circumstances known or appearing to such magistrate to be relevant, to transmit the summons to that other magistrates' court with a request for the service thereof and on receipt of such summons such other magistrates' court shall direct that such summons be served; and in any such case the magistrates' court issuing the summons shall allow such time for the appearance of the person summoned as in the opinion of that magistrates' court is necessary to enable him to appear.

Service beyond jurisdiction of magistrates' court

9. (1) If the person served with the summons does not appear at the time and the place mentioned in the summons, and it is made to appear on oath to the magistrates' court having cognisance of the proceedings that the summons was duly served within a reasonable period before the time for his appearance as aforesaid such magistrates' court may issue its warrant in the prescribed form to apprehend the person so summoned as aforesaid.

Non-appearance of person summoned

(2) A warrant issued under this or the next succeeding rule shall remain in full force until executed by any police officer or member of the district police in any part of the Gilbert Islands and no signature other than that of the magistrate issuing it shall be necessary.

10. In all cases where a charge is made; a magistrates' court, if it thinks it expedient that a warrant should be issued in the first instance instead of a summons, shall cause the charge to be written down as required by rule 3 and verified by the oath of the person making the charge and may issue a warrant in the prescribed form to apprehend the person charged; and such a warrant may issue, notwithstanding that a summons in respect of the matter charged has been issued at a time before the time of the appearance in that summons mentioned:

When warrant may issue in first instance

Provided, however, that no warrant shall be issued under this rule unless the magistrates' court issuing the same is satisfied by evidence on oath that the person to be apprehended is within its jurisdiction at the time when the charge is laid.

[Subsidiary]

Proceedings
on arrest

11. (1) When a person has been apprehended under a warrant, he shall be brought before the magistrates' court which issued such warrant and thereupon, either by warrant in the prescribed form, committed to prison, or, orally, to the custody of the officer apprehending him or to such other safe custody as may be thought fit and the magistrates' court may order him to be brought up at a certain time and place before it and shall give notice accordingly to the person who laid the charge in question:

Provided, however, that no committal under this rule shall exceed 7 days.

(2) Upon the request of the person who laid the charge as aforesaid when the person charged is brought before the magistrates' court upon being apprehended under paragraph (1), the magistrates' court may with the consent of the person charged proceed to hear and determine the charge forthwith.

Compelling
attendance of
witness

12. (1) If it is made to appear to a magistrates' court that any person within its jurisdiction is likely to give or produce evidence which such magistrates' court thinks should be given or produced in any criminal cause or matter and such person will not appear voluntarily for the purpose of being examined as a witness or of producing that evidence such court may issue a summons in the prescribed form to such person requiring his attendance or the production of the aforesaid evidence which shall be sufficiently described in the summons.

(2) If the court is satisfied by evidence upon oath that any such person as aforesaid will not attend unless compelled to do so, the court may issue a warrant in the prescribed form.

When person
charged does
not appear
and when
attendance
may be dis-
penssed with

13. If the person charged does not appear at the time and place of hearing mentioned in a summons, and it is made to appear on oath to the court having cognisance of the proceedings that the summons was duly served within a reasonable period before the time for his appearance as aforesaid and if the court does not think it expedient to issue a warrant for his apprehension, or if the court has before it any writing purporting to be a plea of guilty by the person charged to the charge in question and it is satisfied as to the correctness of such plea, such court may proceed to hear and determine the case without his appearance; and in any case in which it deems it appropriate to do so, a court may cause an endorsement to appear on any summons issued by it notifying the person charged that such court may dispense with his personal attendance at the hearing if he pleads guilty to such charge in writing before the time fixed for hearing.

When person
making the
charge does
not appear

14. (1) If at the time and place appointed the person charged is before the court and the person making the charge, having had due notice, does not appear, the court may dismiss the charge or adjourn the hearing as to it seems fit.

(2) In the event of the charge being dismissed the court may make such order as to payment of compensation by the person making the charge to the person charged and his witnesses for loss of time as to the court seems just; and the compensation to be paid shall be limited to a sum or sums, not exceeding \$5 for each day or part of a day of attendance of each person in respect of whom compensation is payable.

Appearance
of both par-
ties trial and
adjudication

15. (1) If both parties appear, the court shall cause the substance of the charge to be stated to the person charged and ascertain his plea thereto.

(2) If the person charged pleads "guilty", the plea shall be recorded in the exact words used by him and he may be convicted thereon.

(3) If the person charged pleads "not guilty" or if, after a reasonable opportunity being given for him to do so, the person charged refuses to plead, the court shall treat the person charged as having pleaded "not guilty" and shall

[Subsidiary]

hear the person making the charge and such evidence as he shall adduce; and the person charged shall have the right to cross-examine the person making the charge, if he gives evidence, and any witness called by him.

(4) The court if it considers that sufficient evidence has been adduced to call for a defence by the person charged shall inform the person charged that he may give evidence on oath or affirmation and call witnesses, that he may make a statement from where he is not on oath or affirmation and call witnesses or that he may say nothing and call witnesses. The court shall record in writing that this has been done and the reply of the person charged.

(5) If the person charged decides to give evidence on oath or a statement not on oath the court shall hear the evidence or statement which such person may give in his defence and, when he has concluded such evidence or statement or if he has declined to give evidence or make a statement, the court shall hear the evidence of any witness he may wish to call, and the person making the charge shall have the right to cross-examine the person charged, if he gives evidence on oath or affirmation, and any witness called by him.

(6) The clerk or the presiding magistrate of the court shall take full notes of all evidence so given.

(7) The court shall then consider the matter and may then convict the person charged or dismiss the charge. The court shall thereupon declare aloud, and having done so, record, its decision and any punishment imposed or other order made by it in consequence of such decision. The court shall record the reasons for its decision to convict or dismiss the charge.

16. If the court convicts the person charged and imposes a term of imprisonment by way of punishment a warrant of commitment shall be drawn up in the prescribed form, or as near thereto as the circumstances permit, and shall be signed by the presiding magistrate.

Warrant of commitment

PART III CIVIL PROCEDURE

17. For the purpose of commencing any action, the plaintiff may apply to the magistrates' court having jurisdiction for a writ of summons in the prescribed form and the particulars of the claim shall be set out therein and signed and filed by such magistrates' court and a copy issued by it for service on the defendant.

Commencement of civil action

18. (1) The copy writ of summons signed by the plaintiff shall be served by him, or by someone on his behalf, on the defendant personally; and if for any reason personal service cannot be promptly effected, the court which issued the writ may, upon proof of the fact by the plaintiff and on being satisfied that the defendant is within the district and jurisdiction of such court, direct that the same be left with some person other than the defendant, if the court is satisfied that through such person the issue of the writ of summons and its contents will come to the knowledge of the defendant.

Service of summons on defendant and subpoena to any witness

(2) Either party to an action may obtain from the magistrates' court before which a claim is made a subpoena in the prescribed form to a witness to give evidence at the hearing, such court issuing the same upon request.

19. (1) Upon the hearing of any writ of summons a magistrates' court shall first cause the substance of the claim to be stated to the defendant and shall then ask him if he does, or does not, agree with the claim; and if the defendant pleads that he does not agree with the claim the magistrates' court shall then hear the evidence of the plaintiff and such other evidence as he may adduce; and the defendant shall have the right to cross-examine the plaintiff and any witness called by him.

Procedure at hearing of summons

[Subsidiary]

(2) The court shall then hear such evidence as the defendant may wish himself to give in support of his case and, when he has concluded such evidence, if any, the evidence of any witness he may wish to call and the plaintiff shall have the right to cross-examine the defendant, if he gives evidence, and any witness called by him.

(3) The clerk or the presiding magistrate of the court shall take full notes of all evidence so given.

Adjournment 20. (1) Notice of any adjournment given by a magistrates' court in the presence of both parties shall be deemed a sufficient notice to them of such adjournment.

(2) If at the time and place appointed by a magistrates' court for any adjourned hearing either or both the parties do not appear, such magistrates' court may then and there proceed with the further hearing of the case as if the party or parties were present.

Judgment 21. On completion of the hearing by any magistrates' court it shall give judgment either immediately or after taking time for reflection by making such order in the matter as in the nature of the case seems just.

Non-appearance of plaintiff 22. If the plaintiff does not appear on the day named in any writ of summons for the hearing thereof, the court may dismiss the summons and order payment by the plaintiff to the defendant and his witnesses, if he and those witnesses have attended the place of hearing, of such compensation for loss of time as to such court seems just.

Non-appearance of defendant 23. If a defendant does not appear on the day named in the writ of summons for the hearing thereof, the court may, upon proof that the same has been served and the plaintiff proving to the satisfaction of such court the claim sought to be enforced, make an order upon such writ of summons as the nature of the case demands, and such order may provide for the payment by the defendant to the plaintiff and his witnesses, if he and those witnesses have attended at the place of hearing, of such compensation for loss of time as to the court seems just.

Allowance to witnesses 24. Compensation paid under the provisions of the 2 last preceding rules shall not exceed \$5 for each day or part of a day of attendance of each person in respect of whom compensation is payable or such other sum as may be prescribed.

Mode of enforcing judgment 25. (1) Upon a judgment of a magistrates' court for any sum of money such court may—

(a) order the sum to be paid forthwith, and in default of payment order that the defendant be imprisoned; or

(b) order the sum to be paid by instalments and in default of the payment of any instalment order that the defendant be imprisoned:

Provided that any imprisonment ordered under this regulation shall not exceed the following scale—

Amount	Maximum Period
Not exceeding \$2	7 days;
Exceeding \$2 but not exceeding \$4	14 days;
Exceeding \$4 but not exceeding \$20	6 weeks;
Exceeding \$20 but not exceeding \$40	2 months;
Exceeding \$40 but not exceeding \$50	3 months;
Exceeding \$50 but not exceeding \$100	6 months;
Exceeding \$100 but not exceeding \$200	12 months;

[Subsidiary]

Provided further that no order of imprisonment under this regulation shall be made unless it is proved to the satisfaction of the court that the person making default has, or has had since the date of the judgment, the means to pay the debt but refuses or neglects to do so.

(2) For the avoidance of any possible doubts, it is declared that the undergoing of any period of imprisonment ordered under this rule for the non-payment of any debt shall not extinguish that debt.

26. (1) Unless otherwise provided in the law on which such order is based, a person disobeying for a period of 7 days any order of a magistrates' court other than for the payment of money may, upon application being made to the court and on proof that the order has been disobeyed be ordered to pay a sum not exceeding \$5 for every day during which he has disobeyed the order, or to be imprisoned until he consents to obey the order.

Default in compliance with order of court other than for payment of money

(2) No person shall, for disobeying any such order as is mentioned in this and the last preceding rule, be liable to imprisonment for a period or periods amounting together to more than 12 months or to payment of any sums exceeding in the aggregate \$200.

PART IV

POWERS AND PROCEDURE IN LAND CAUSES AND MATTERS

27. The magistrates' court, either of its own motion or on the application of any party, may summon any person subject to its jurisdiction to attend to give evidence, or to produce documents, or to be examined.

Commencement of action by summons

28. If an applicant fails to appear at the time and place at which he has been required to attend the court and does not excuse his failure to the satisfaction of the court, the court may strike out his application, and if any party does not obey a summons issued under paragraph 1 and does not excuse his failure to the satisfaction of the court, then, after proof of service, the court may appoint a relative of such party to the proceedings as may reasonably be expected to have good knowledge of the history of the title to the land under dispute, or other matter in issue, to represent each party and may thereupon proceed to hear and determine the matter in issue.

Procedure where applicant or party fails to appear

29. In all matters before the court the parties or their representatives, or, in the case of a party who has failed to appear, his representative as appointed under rule 28 shall be present throughout the parties being present.

Parties to be present in court

30. The following procedure shall be observed by the court—

Procedure

(a) A statement of the matter in issue shall be made to the court by the applicant if it is in the nature of a claim against the other party or by the clerk if the matter arises out of the court's own motion.

(b) If there is an applicant, the court shall first hear his evidence together with that of any witnesses who he wishes to call, and shall then proceed to hear the evidence of the other party together with that of his witnesses; and if there is no applicant the court may call such witnesses and in such order as it thinks fit.

(c) Any person appearing before the court to give evidence may be examined or give evidence on oath in the form, or with the ceremony, that he declares to be binding on his conscience.

[Subsidiary]

- (d) After each party to the action has given evidence, the opposite party shall be entitled to ask any questions bearing on the evidence given. Similarly each party may ask questions of any witness for the other party after the latter has given evidence. The presiding magistrate may ask any questions at any stage in the proceedings, and may recall and question either party or any witness at any stage in the proceedings before judgment.
- (e) During the course of the proceedings the presiding magistrate may discuss with the other magistrates of the court the native custom applicable to the matter in issue. After hearing all the evidence and discussing, as necessary, the native custom, the presiding magistrate shall summarise the facts and the custom for the benefit of the other magistrates of the court. The court shall then consider its judgment, which shall be by a majority vote of all the magistrates. The judgment so arrived at and the reasons therefor shall be pronounced in open court by the presiding magistrate and shall be entered by the clerk in the minutes of the court.
- (f) The court, unless cleared under rule 29, shall be open to attendance by members of the public.

PART V

GENERAL PROVISIONS RELATING TO APPEAL

- Appeals to be heard, etc., by High Court 19 of 1979
31. Subject to the proviso to section 5 of the Native Lands (Amendment) Ordinance 1977 an appeal from any magistrates' court shall be dealt with, heard and determined by the High Court.
- Sittings, etc. of High Court to hear, etc., appeals
32. The sittings, forum and venue of the High Court for the purpose of dealing with, hearing or determining any appeal shall, subject to these Rules and to any directions given by the Chief Justice (either generally or with regard to any particular case) be settled by the judge holding such court.
- Time for commencement of appeal and procedure
33. (1) An appeal, whether civil or criminal, from any decision of a magistrates' court to the High Court shall, subject to the other provisions of this rule, be commenced by the appellant giving notice of appeal in writing in the form prescribed to the clerk of such magistrates' court within 21 days after the day on which such decision was given.
- (2) Where an appeal lies to the High Court from any decision of a magistrates' court in any criminal cause, the magistrates' court shall, immediately after announcing such decision, inform the person convicted if he is in court and not represented by a legal practitioner, of his right to such appeal and of the time within which such appeal may be brought; and if, upon receiving such information, the person convicted declares verbally to the court that he intends so to appeal such declaration shall for all purposes of these Rules have the same effect as a written notice of appeal given in accordance with the provisions of paragraph (1).
- (3) For the purpose of paragraphs (1) and (2) the day on which the decision of a magistrates' court is given, where such court has adjourned the trial after conviction, shall be the day upon which the court sentences or otherwise deals with the offender.
- (4) Where it appears to the High Court, on application made to it in accordance with the following provisions of this rule that any person wishing to appeal to that court from any decision of a magistrates' court has failed to give the notice of appeal as required by paragraph (1) or has failed to give such notice within the time prescribed, the High Court, may, if it thinks fit, allow such

[Subsidiary]

person to give notice of appeal within such period as it may specify or direct that any notice of appeal given by such person after the expiration of the period prescribed by paragraph (1) be deemed to have been given within the time prescribed.

(5) An application made under paragraph (4) shall be in writing stating the grounds upon which it is made and shall be sent by the applicant to the Registrar of the High Court; and in the event of the High Court's granting the application, notice of its decision shall be sent by the Registrar of the High Court to the respondent.

34. A notice of appeal for the purposes of these Rules shall be in writing in the prescribed form and shall, where indicated in such form, state clearly the grounds of appeal, and shall be signed by the appellant. Notice of appeal

35. (1) Within 3 days of receiving any notice of any civil appeal the clerk of any magistrates' court shall give notice of it to the respondent or respondents to the proceedings in question by sending to him, or to each of them, a copy of the notice of appeal duly endorsed by the clerk with the date of its receipt by him. How respondents notified of appeals

(2) Notice to the respondent in the case of any criminal appeal shall be given by the High Court in accordance with the provisions of rule 45.

36. (1) Upon receiving any notice of appeal under these Rules, the clerk of a magistrates' court shall forthwith cause particulars thereof to be sent to the Registrar of the High Court; and such particulars may be sent by post, or by telegraph, but in any case shall be despatched so as to reach the Registrar of the High Court not later than 24 hours after receipt by the clerk of such magistrates' court of such notice. Clerk of magistrates' court to notify High Court

(2) The clerk of the magistrates' court shall thereafter comply with any directions he may receive from the Registrar of the High Court with regard to the despatch of the record of appeal to the High Court, or as to its retention and safe custody pending the next sitting of the High Court.

37. Within 7 days of receiving any notice of appeal under these Rules the clerk of any magistrates' court shall, without the application of any party, make up and complete a record of appeal which shall consist of the notice of appeal, the pleadings, if any, all documents admitted as evidence or tendered as evidence and rejected in the original proceeding, true copies of the notes of the evidence in such proceeding and the judgment or order of the court. Clerk of magistrates' court to complete record

38. It shall be the duty of the Registrar of the High Court forthwith upon receipt of any record of appeal to arrange for the translation of any paper or document, or any part thereof, not in the English language into such language by an interpreter duly appointed under section 41 (2) of the principal Ordinance and the Registrar shall also notify to the parties thereto the time and place fixed for the hearing of any appeal. Translation and notification of parties

39. (1) An appellant may discontinue any appeal by giving notice in writing not later than the third day before the day fixed for the hearing of the appeal to the clerk of the magistrates' court against the decision of which the appeal is brought and such clerk shall thereupon give notice of the discontinuance to the Registrar of the High Court and to the respondent. Discontinuance of appeal

(2) Where notice to discontinue an appeal has been duly given by the appellant, the magistrates' court against the decision of which the appeal was notified may issue process for endorsing that decision, subject to anything already suffered or done under it by the appellant.

(3) Where notice to discontinue any criminal appeal has been given by the appellant, any recognisance conditioned for the appearance of the appellant at

[Subsidiary]

the hearing of the appeal shall have effect as if conditioned for the appearance of the appellant before the magistrates' court from the decision of which the appeal was notified at a time and place to be notified to the appellant by the clerk of that court.

Service of notices, etc., relating to appeals

40. Any notice of appeal or other document relating to any appeal required under these Rules to be served on any person may be served by delivering the same to him personally or by sending it by post in a registered letter addressed to him at his last known or usual place of abode.

Judge to peruse each record

41. When the Registrar of the High Court receives the record of any appeal, he shall, as soon as practicable after the completion of any translation required under rule 34, deliver it to a judge who shall forthwith peruse the same.

Decision on appeal

42. (1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the magistrates' court by which the decision appealed against was given.

(2) The magistrates' court to which a judgment or order is certified under paragraph (1) shall thereupon make such orders as are conformable to the judgment or order of the High Court and shall take such steps as may be necessary to enforce such judgment or order.

Adjournment of hearing of appeal

43. The High Court may at any stage adjourn the hearing of any appeal under these Rules.

Notice of summary dismissal of criminal appeal

44. Whenever a criminal appeal is summarily dismissed notice of such dismissal shall forthwith be given by the Registrar of the High Court to the appellant.

Setting down criminal appeal and notice to respondent

45. If the High Court does not dismiss the appeal summarily it shall set the same down for hearing and shall notify the appellant and the respondent of the time and place fixed for the hearing and, unless the appeal is against sentence only, supply copies of the record of appeal to the parties.

Release on bail of appellant in custody and suspension of sentence pending

46. (1) Where a convicted person gives notice of appeal under these Rules, the High Court, or the magistrates' court which convicted such person may, if, in the circumstances of the case, it thinks fit, with or without hearing any party, order that the convicted person, if he be in custody, be released on bail upon entering into a bond upon his own recognisance, with or without sureties, conditioned upon his due appearance at the hearing of the appeal or order that the sentence or order against which the appeal is pending be suspended pending the determination of the appeal; and the bonds to be entered into by any appellant and by sureties under this rule shall be in the prescribed form.

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

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

(4) Where any person, having given notice of appeal under these Rules has for the purpose of his release from custody entered into a recognisance conditioned for his appearance at the hearing of the appeal, the clerk of the magistrates' court from the decision of which the appeal is brought shall, before the day fixed for the hearing of the appeal, send the recognisance, if taken before such court, to the Registrar of the High Court.

[Subsidiary]

47. (1) Any appellant, notwithstanding that he is in custody, shall be entitled to be present, if he so desires, at the hearing of any appeal.

Appellant entitled to be present at hearing of criminal appeal and powers of High Court if appellant fails to be present at any hearing

(2) Any appellant who has been admitted to bail under the provisions of this Part shall be personally present at each and every hearing of his appeal and at the final determination thereof and in the event of such appellant not being present at any such hearing or determination, the High Court when dealing with the appeal, may, if it thinks right to do so, decline to consider the appeal and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant:

Provided, however, that the High Court may consider an appeal under this Part in the absence of the appellant if it thinks fit to do or make such other order as to it seems just.

(3) The High Court, on the application of any person, or, if it thinks right so to do, without application, may make, revoke or vary any such order previously made or enlarge from time to time the recognisance of the appellant or his sureties or substitute any other surety for a surety previously bound.

PART VI

CIVIL APPEALS

48. (1) The appellant in any civil appeal under these Rules shall give to the clerk of the magistrates' court concerned, within 7 days of the time of the lodging therewith of the relevant notice of appeal, security for the prosecution of the appeal and for all such costs as he may be ordered to pay. Such security shall be in the following amounts—

Security to be given for any civil appeal

- (a) where the subject matter of the judgment appealed from exceeds \$100 in value \$5
- (b) in all other cases \$3

(2) In the event of security not being given as prescribed in paragraph (1), all proceedings in the appeal shall be stayed and, unless the High Court otherwise orders, a formal order of dismissal shall be made at the sitting of the High Court at which the hearing of the appeal would otherwise have taken place.

49. No formal notice shall be required for any cross-appeal.

Cross-appeal

50. The High Court when any appeal under this Part is, or is to be, heard may extend the time for any such appeal or amend the grounds of appeal or make any other order on such terms as such Court shall think fit to ensure the determination on the merits of the real question in controversy between the parties.

Extension of time for civil appeal amendment of grounds, etc.

51. (1) If the appellant therein fails to appear in person, or by legal practitioner on his behalf, when an appeal under this Part is called on for hearing the appeal shall, on proof of service on the appellant of notice of the hearing, stand dismissed with costs:

Failure of parties to appear at civil appeal

Provided that when such an appeal has been dismissed owing to the non-appearance of the appellant, or any legal practitioner representing him, the High Court may, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

(2) If the respondent fails to appear, either in person, or by legal practitioner representing him, when the appeal is called on for hearing, the High Court shall, on proof of service of notice of hearing, proceed to hear the appeal *ex parte*.

[Subsidiary]

PART VII

FEES

Fees Magistrates' Courts (Fees in Civil Cases) Rules

52. The fees set forth in the Magistrates' Courts (Fees in Civil Cases) Rules may be demanded and received by the clerks of magistrates' courts, or by other persons appointed to receive such fees for and in respect of the several matters mentioned therein.

PART VIII

GENERAL

Application of Criminal Procedure Code Ordinance

Cap. 17

53. In all criminal proceedings in or before any magistrates' court, where no other provision is made by the Ordinance or these, or other, Rules made under it, the practice and procedure to be followed by such magistrates' court shall, unless the Chief Justice, either generally, or in any special case, directs otherwise, be in accordance with the practice and procedure required by the provisions of the Criminal Procedure Code, to be followed in summary trials before magistrates' courts.

Appearances

54. Any party may appear on his own behalf in any cause before any magistrates' court or, with the leave of such court, he may be represented by any person he nominates for that purpose.

Extension of jurisdiction where more than 1 magistrates' court in the same district

55. Notwithstanding anything contained in these Rules, where there is more than 1 magistrates' court in a district or on an island, the jurisdiction of such courts shall, for the purposes only of issuing warrants, summonses or any other process, extend over the whole of that district or island.

Service beyond jurisdiction in divorce proceedings

56. (1) Whenever the respondent to a divorce petition is out of the jurisdiction of the magistrates' court before which the petition is brought but is within the jurisdiction of another magistrates' court the first mentioned court may transmit the petition and such other documents as may be required to be served upon the respondent, to that other magistrates' court, and such court shall direct service of the same.

(2) Upon proof of the service of the petition and other documents referred to in paragraph (1) and after a reasonable time has been allowed for the respondent to enter an appearance, the magistrates' court before which the petition is brought may set it down for hearing, and a summons for attendance shall be served upon the respondent in the manner set forth in paragraph (1) for the service of a petition, and upon proof of the service of such summons the petition may be proceeded with.

(3) The magistrates' court before which the petition is brought may accept as proof of service a written communication or a telegram issuing from the court that directed service.

L.N. 30/78

(2) MAGISTRATES' COURTS (CIVIL CLAIMS IN CRIMINAL PROCEEDINGS) RULES

(NOTE. These Rules are made under section 88 (r) as read with section 53 (2).)

Commencement: 1st May 1978

Citation

1. These Rules may be cited as the Magistrates' Courts (Civil Claims in Criminal Proceedings) Rules.

[Subsidiary]
Interpretation

2. In these Rules, unless the context otherwise permits, words and expressions used shall have the same meaning as is ascribed to them in the principal Ordinance with the following exceptions—

“civil claim” means any civil action taken in a magistrates’ court for compensation or damages, not exceeding \$3000, or for the return of any thing lost, stolen or destroyed not exceeding \$3000 in value arising out of or resulting from an act or acts done by another person or persons which person or persons have been charged before the same magistrates’ court for a criminal offence or offences in respect of such act or acts;

“court” means a magistrates’ court;

“thing” includes money or valuable securities.

3. (1) Wherever a person desires to make a civil claim arising out of a charge pending before a court, but not yet tried, he shall inform the clerk of the court before which the person against whom he desires to make the civil claim is charged, naming the person charged, setting out the nature and particulars of his civil claim, his own name and address for service, the names and addresses of any witnesses he may wish to testify on his behalf and pay the appropriate fee prescribed by regulations made under the principal Ordinance.

Making a
civil claim

4. (1) The clerk of the court on the receipt of the written civil claim in accordance with rule 3, and the prescribed fee, shall issue a writ of summons directed to the person against whom the civil claim is made (hereinafter referred to as the civil defendant) setting out the details of the civil claim and informing him that it will be heard by the magistrates’ court at the same time as the criminal offence upon which it is founded is tried.

Duty of clerk
of court

(2) The writ of summons shall be in Form 1 in the Schedule to these Rules.

Schedule

5. (1) The civil defendant shall be required to state either orally in the court or in writing to the clerk of the court on Form 2 in the Schedule to these Rules whether or not he agrees with the civil claim made against him and agrees to pay the compensation or damages claimed in full or to return the thing the return of which is claimed, together with any costs or fees incurred and claimed by the person making the civil claim (hereinafter referred to as the civil claimant), or whether he agrees in part only or wishes to make a counter-claim.

Reply by civil
defendant
and procedure
on
agreement
Schedule

(2) If the civil defendant agrees to pay the compensation and damages, or to return the thing claimed in full together with any costs or fees incurred by the civil claimant, whether or not the civil defendant pleads guilty, the court shall record his agreement on the court record and make an order of the court that the amount or the thing whose return is claimed be paid or returned forthwith or within a period of time to be fixed by the court together with any fees or costs claimed, and shall then proceed to hear the criminal case.

(3) The order so made by the court shall be enforceable in the same way as any order made by the court in exercise of its civil jurisdiction.

6. (1) If the civil defendant does not agree to pay the compensation or damages, or to return the thing claimed, or any part of them or it, or to pay any fees or costs incurred and claimed by the civil claimant or agrees only in part or wishes to make a counter-claim the court shall, if the accused pleads not guilty to the charge laid against him after the opening of the case for the prosecution, permit the civil claimant to present his case in court and allow him to cross-examine all the prosecution witnesses and to call and examine-in-chief any witnesses he may wish to support his claim. The civil defendant shall be entitled to cross-examine all the prosecution witnesses after the civil claimant has cross-examined them and shall be entitled to cross-examine any witnesses called by the civil claimant who have given evidence in the court.

Procedure if
claim con-
tested in
criminal case

[Subsidiary]

(2) At the end of the prosecution's case the civil defendant, apart from his rights under regulation 15 (4) of the Magistrates' Courts Regulations, may give evidence on oath or not on oath, or say nothing, with regard to the civil claim and in addition may address the court on the whole subject of the civil claim and any counter-claim he may have made.

Procedure where claim contested on plea of guilty

7. Where a civil defendant pleads guilty to the charge and does not agree to pay the compensation or damages or to return the thing claimed in full together with any costs and fees incurred and claimed by the civil claimant under rule 3 or agrees only in part or makes a counter-claim the court shall proceed to find the accused guilty and, subject to the law for the time being in force, convict him of the charge or discharge him absolutely or conditionally and shall then proceed to try the civil claim in the usual way by hearing the civil claimant and his witnesses, if any, followed by the civil defendant and any witnesses he may call to support the claim or any counter-claim he may have made.

Decision of court to be on balance of probabilities and to be independent of decision in criminal case

8. (1) When the court has heard all the evidence and the submissions both for the civil claimant and the civil defendant and inspected any exhibits or visited the scene of any incident connected with the claim the court shall decide, *on a balance of probabilities*, whether or not the *civil claimant has made out his claim* and, if it finds for the civil claimant and rejects any counter-claim, shall decide what compensation or damages it shall order the civil defendant to pay and whether the thing the return of which was claimed should be returned by the civil defendant to the civil claimant and what fees and costs should be awarded to the civil claimant. Compensation and damages shall not exceed in amount those claimed by the civil claimant and shall not exceed the civil jurisdiction of the court.

(2) Where the court finds that the civil claimant has not proved his claim or that the civil defendant has proved his counter-claim, the court may award costs to the civil defendant in addition to any award it may make on the counter-claim.

(3) It is immaterial to the finding of the court, either for or against the civil claimant or the civil defendant or to the award of compensation or damages or to the order of the return of the thing claimed, or to the award of costs or fees, that the civil defendant has been acquitted or convicted of the criminal charge out of which the civil claim arose.

Procedure when claim made after commencement of criminal case

9. (1) Where a person desires to make a civil claim in criminal proceedings which have already commenced but have not yet terminated he shall proceed as laid down in rule 3.

(2) The clerk of the court shall on the receipt of notification and fees proceed as in rule 4 save that he shall notify the civil defendant that the civil claim will be heard at the end of the criminal case and that he may either agree as in rule 5 (1), in which case the matter will be disposed of by the court as in rule 5 (2), or he may disagree, as in rules 6 and 7, in which case the matter will be tried by the court immediately after the conviction or acquittal of the accused and all witnesses who gave evidence at the criminal trial may be recalled to give evidence if required.

Appeal

10. (1) Either the civil claimant or the civil defendant may appeal against the decision of the court on the merits of the case or on the question of the amount of compensation or damages, irrespective of whether the civil defendant was acquitted or convicted.

(2) The procedure in such an appeal shall follow that laid down in Part V of the Magistrates' Courts Regulations.

[Subsidiary]
Claim after
determination

11. No civil claim may be made under the procedure laid down in rules 3, 4, 5 or 9 of these Rules once the criminal case has been finally determined unless the decision is altered on appeal or revision and a re-trial of the criminal case takes place.

SCHEDULE

(Rules 4 & 5)

FORM 1—Civil Claim in Criminal Proceedings (Rule 4)

MAGISTRATES' COURTS ORDINANCE

(Cap. 52)

WRIT OF SUMMONS

Civil Claim in Criminal Proceedings
Number /
In the Magistrates' Court of and for
the District of

BETWEEN
(Here put the name and address of the person making claim)

CIVIL CLAIMANT

AND
(Here put the name and address of the person against whom the claim is made)

CIVIL DEFENDANT

TO
(Here put the name and the address of the Civil Defendant)

YOU are commanded to appear before the Court sitting to hear the case of
The Queen or v Yourself and
sitting on the day of 19... at
o'clock in the noon to answer a civil claim
(Here put "fore" or "after")
against you by
(Here put name and address of Civil Claimant)

Dated the day of 19....

.....
Presiding Magistrate/Magistrate

[Subsidiary]

PARTICULARS OF CIVIL CLAIM

The Civil Claimant claim (here state the particulars of the civil claim and the order of the court which is sought).

Sum (or value of thing) claimed	\$	
Court fees	\$	
Total =	\$	

.....
Signature of Civil Claimant

FORM 2—Reply by Civil Defendant
in Criminal Proceedings (Rule 5)

MAGISTRATES' COURTS ORDINANCE

(Cap. 52)

REPLY

Civil Claim in Criminal Proceedings
Number /
In the Magistrates' Court of and for
the District of

BETWEEN
(Here put the name and the address of the person making the claim)

CIVIL CLAIMANT

AND
(Here put the name and the address of the person against whom the claim is made)

CIVIL DEFENDANT

TO
(Here put the name and address of the Civil Claimant)

The Civil Defendant in this matter *AGREES/DOES NOT AGREE with the Civil Claim made by the Civil Claimant and to pay any fees and costs incurred.

OR°

[Subsidiary]

The Civil Defendant in this matter AGREES that
 BUT DOES NOT AGREE that
 AND CLAIMS that

Dated thisday of19....

*Delete that which does not apply.
 *To be used if there is partial agreement
 or a counter-claim.

.....
 CIVIL DEFENDANT

(3) MAGISTRATES' COURTS (FEES IN CIVIL CASES) RULES

1. These Rules may be cited as the Magistrates' Courts (Fees in Civil Cases) Rules, and shall come into operation when section 88 of the principal Ordinance comes into operation. Citation and commencement
2. The fees prescribed in the Schedule to these Rules shall be charged in respect of the matters to which they are respectively assigned in civil causes and matters brought in a magistrates' court. Fees in civil causes etc., in magistrates' courts
3. The fees prescribed in the Schedule shall be paid to the clerk of the magistrates' court in which the cause or matter is to be tried. Fees payable to clerk of court
4. A magistrates' court may if it thinks fit dispense with the payment of any fee on account of the poverty of any party or for other sufficient reason. Magistrates may waive fees

SCHEDULE

(Rule 2)

I. FEES—IN CIVIL CAUSES OR MATTERS

	\$	c
1. On issue of Summons—		
(a) Where the amount involved does not exceed \$50	50	
(b) Where the amount involved exceeds \$50 but does not exceed \$100	75	
(c) Where the amount involved exceeds \$100 but does not exceed \$150	1	50
(d) Where the amount involved exceeds \$150 but does not exceed \$200	2	50
(e) Where the amount involved exceeds \$200 but does not exceed \$500	3	50
(f) Where the amount involved exceeds \$500 but does not exceed \$1000	5	00
(g) Where the amount involved exceeds \$1000 but does not exceed \$3000	7	50

[Subsidiary]

	\$	c
2. On summons where judicial relief is sought but not the recovery of money or property and where the amount involved cannot be estimated	1	00
3. On set-off or counterclaim: a fee of the same amount as the fee payable on the issue of a summons.		
4. Renewal of writ of summons, etc.: a fee of half the amount at the fee payable on the issue of a summons.		
5. On hearing: a fee of the same amount as the fee payable on the issue of a summons but if the defendant admits the claim or makes default, half the amount of such fee.		
6. On an application to enforce any order by attachment or to commit a judgment debtor to prison	1	00
7. On every summons to a witness		50
8. On every oath to the truth of an affidavit or deposition administered by a magistrate or by a justice of the peace		50
9. On every oath administered after office hours	1	00
10. Marking any exhibit attached to any affidavit		25
11. On every application or summons not specifically charged	1	00
12. Entering by plaintiff notice of discontinuance of action		50
13. Every exhibit used on trial		25
14. Order of attachment	1	00
15. Order for execution and sale	1	00
16. Order for committal	1	00
17. On any order of the court not specifically charged	1	00
18. On certifying a copy of a document as an office copy		50
19. On copies of proceedings for every 72 words or part of 72 words		10

II. FEES—CIVIL APPEAL

1. On giving notice of intention to appeal	2	00
2. On filing grounds of appeal	1	00
3. For the copy of the record of appeal for the appellate court— for every 72 words or part of 72 words		10

III. SHERIFF'S FEES

1. For the service of writ of summons or subpoena or any other process on each defendant or witness	50
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[Subsidiary]

- 2. In addition to No. 1, where service is to be effected on any person more than 2 miles from the nearest court house and where that journey is to be performed by land, a fee of 10 cents per mile with a minimum fee of 10 cents. The amount of the fee payable under this item is to be calculated without reference to the return journey. \$ c
- 3. In addition to Nos. 1 and 2, reasonable travelling expenses actually incurred by the officer effecting service. Where an officer is engaged on more than 1 service the court may order that the sum payable under this item be apportioned.
- 4. Seizure 4 00
- 5. For every arrest in a civil case 2 00
- 6. In conveying to prison from place of arrest a fee not exceeding 50 cents per day with reasonable travelling expenses actually incurred.
- 7. For executing process of attachment or committal 4 00
- 8. For any duty not herein provided for Such sum as the court may allow.

(4) MAGISTRATES' COURTS (MAGISTRATES' SITTING FEES) RULES

(NOTE. These Rules are made under section 88 (o) by the Chief Justice after consultation with the Minister of Finance.)

- 1. These Rules may be cited as the Magistrates' Courts (Magistrates' Sitting Fees) Rules and shall be deemed to have come into force on 1st May 1978. Citation and commencement
- 2. The duly appointed presiding magistrate of any magistrates' court or any duly appointed magistrate acting as presiding magistrate shall be entitled to receive a sitting fee not exceeding \$10 for each day or part of a day when he sits in a properly constituted court as presiding magistrate or acting presiding magistrate and lawfully tries cases. Presiding magistrates' sitting fee
- 3. Any duly appointed magistrate, or any duly appointed temporary magistrate, who sits as a magistrate shall be entitled to receive a sitting fee not exceeding \$5 for each day or part of a day on which he sits in a properly constituted court as a magistrate and lawfully tries cases. Magistrates' sitting fee
- 4. (1) Any duly appointed magistrate whose name appears on a Lands Magistrates' Panel shall be entitled to receive a sitting fee not exceeding \$5 for each day or part of a day on which he sits in a properly constituted court as a magistrate. Lands Magistrates' Panel sitting fee
 (2) Any duly appointed magistrate whose name appears on a Lands Magistrates' Panel shall be entitled to receive a sitting fee not exceeding \$10 for each day or part of a day on which he sits in a properly constituted court as a presiding magistrate or as an acting presiding magistrate.
- 5. No presiding magistrate, acting presiding magistrate, magistrate, temporary magistrate or magistrate of the Lands Magistrates' Panel shall receive more Only 1 sitting fee payable

[Subsidiary]

than 1 sitting fee for any 1 sitting of a properly constituted court on any 1 day or part of a day.

Where a court fails to sit

6. Whenever a presiding magistrate or any magistrate, temporary magistrate or magistrate of the Lands Magistrates' Panel attends at the magistrates' court on a day appointed for a sitting of the court of which he is a member and on which court he was lawfully required to sit on that day and if for any reason beyond his control the court does not sit on that day he shall be entitled, subject to the discretion of the Chief Justice, to receive the sitting fee which he would have received had the court sat and tried cases on that day.

Fees and allowances in addition to be determined by Chief Justice

7. Whenever a presiding magistrate or any magistrate, temporary magistrate or magistrate of the Lands Magistrates' Panel is required by the Chief Justice to attend any meeting or perform any duty or function other than sitting in court to try cases he shall be entitled only to such fee or allowance, not exceeding the fee to which he would be entitled had he attended such a court sitting, as the Chief Justice may in any particular case determine:

Provided that, except as mentioned above, a presiding magistrate or an acting presiding magistrate shall not be entitled to any fee in respect of any supervisory or other similar duties carried out in addition to sitting in court.

Chief Justice to decide magistrates of Lands Magistrates' Panel who may sit

8. No magistrate of the Lands Magistrates' Panel may sit on any magistrates' court as a presiding magistrate, acting presiding magistrate or a magistrate until the clerk of court for the magisterial district in respect of which such magistrate has been appointed shall have informed him, on the instructions of the Chief Justice, that he may so sit for any particular case or on any particular day:

Provided that a magistrate of the Lands Magistrates' Panel may sit as a presiding magistrate or a magistrate if he has been so appointed by warrant or is otherwise lawfully so entitled to sit in addition to having been appointed to the Lands Magistrates' Panel.

No fees or allowances in addition to be paid

9. No presiding magistrate, magistrate, temporary magistrate or magistrate of the Lands Magistrates' Panel or any magistrate acting as a presiding magistrate or any justice of the peace shall be entitled—

- (1) to any fee or other emoluments under the Ordinance in addition to those to which he may be entitled, or which he may receive, under these Rules;
- (2) to any other benefits or allowances under the Ordinance;
- (3) to any personal fee for signing summonses, warrants, affidavits, statements, declarations or other documents of a legal nature in his judicial capacity and any fee paid to him for any of these services must be paid by him as soon as possible to the clerk of the court for the magisterial district for which he has been appointed, failing which payment the amount of any such fee shall be deducted from any sitting fee or other allowance to which he may be entitled under the Ordinance.

[NOTE. Rule 10, being transient, is omitted.]

L.N. 39/75

(5) MAGISTRATES' COURTS (ADMINISTRATION OF
NATIVE ESTATES) RULES

(NOTE. These Rules are made under sections 60 and 88 (a).)

Citation

1. These Rules may be cited as the Magistrates' Courts (Administration of Native Estates) Rules.

[Subsidiary]

2. (1) Where on the death of any native ordinarily resident in the Gilbert Islands it is found that he died intestate or his will is held by a competent court to be invalid the Chief Lands Officer, on notice being given to him by the competent court or by or on behalf of the next of kin of the deceased person, shall assume in respect of the estate of the deceased person the powers conferred and the duties imposed on the administrator by these Rules.

Chief Lands
Officer to
administer
native estates

(2) Any native ordinarily resident in the Gilbert Islands may by will or otherwise appoint the Chief Lands Officer to be the administrator of his estate either solely or jointly with some other person and on his death the Chief Lands Officer shall assume in respect of the estate of the deceased person the powers conferred and the duties imposed on the administrator by these Rules either solely or jointly with the other person appointed an administrator, as the case may be.

3. (1) The administrator shall—

Powers and
duties of
administrator

- (a) receive all the property of the deceased person both movable and immovable and hold the same as trustee until a final distribution is made;
- (b) apply to the magistrates' court for directions as to the distribution of the deceased person's estate and shall comply with all such directions and with all directions as to distribution of the deceased person's estate given by any tribunal on appeal from a judgment, decision or order of the magistrates' court;
- (c) keep proper records and books of account in respect of each estate of which he is administrator and when required to do so by the Director of Audit shall forthwith make all such records and books of account available for inspection by the Director of Audit;
- (d) deposit all such funds as may come into his possession as administrator of a deceased person's estate either with the branch of the Bank of New South Wales situated at Bairiki on Tarawa Island in the name of the Chief Lands Officer as trustee of the estate or with the Chief Accountant in the name of the deceased person.

(2) The administrator may—

- (a) from such funds as he may hold as administrator for the benefit of the estate of a deceased person—
 - (i) make such advances to the widow or other person who was dependent on the deceased person as he may consider reasonable and necessary for the relief of hardship;
 - (ii) discharge any debts due from the estate;
- (b) collect any debts due to an estate of which he is administrator;
- (c) on behalf of any estate of which he is administrator bring and maintain any suit in any court of competent jurisdiction and likewise defend any suit; but the administrator shall in no case be personally liable as a defendant in any such suit.

4. The fees payable in respect of the matters specified in the Schedule shall be as therein specified. Fees

[Subsidiary]

SCHEDULE
(Rule 4)

SCALE OF FEES

1. On the administration of an estate, where the amount of the monetary estate—
 - (a) does not exceed \$1000 1½ %
 - (b) exceeds \$1000 1½ % on the first \$1000 and 1% on the excess
2. For application to the magistrates' court under rule 3 (1) (b) \$1
3. For distribution to each beneficiary 50 c.

L.N. 67/78

**(6) MAGISTRATES' COURTS (COSTS IN CRIMINAL CASES)
RULES, 1978**

- Citation** 1. These Rules may be cited as the Magistrates' Courts (Costs in Criminal Cases) Rules.
- Definition** 2. In these Rules "court" means a magistrates' court constituted under section 7 (1) and (3) of the Ordinance.
- Presiding magistrates may direct the payment of costs** 3. A presiding magistrate in the exercise of his criminal jurisdiction may direct the payment of the costs of the prosecution or defence or both in accordance with the provisions of these Rules out of the funds of the Gilbert Islands.
- Amounts to be paid** 4. The costs which may be so directed to be paid are such sums as, subject to these Rules, appear to the court reasonably sufficient to compensate the prosecutor for the expense properly incurred by him in instituting and carrying on the prosecution and to compensate any person acting as an interpreter or attending to give evidence for the prosecution or defence or called to give evidence at the instance of the court for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and acting as an interpreter or to the giving of evidence.
- Amount in discretion of court** 5. The making of any order for the payment of costs under these Rules shall be in the discretion of the court.
- Witnesses of character** 6. No expenses to witnesses whether for the prosecution or defence if such witnesses are witnesses to character only shall be allowed unless the court otherwise orders.
- Costs to conform to scale Schedule** 7. (1) The allowances for costs which may be ordered to be paid under these Rules shall conform to the respective scales set out in the Schedule.
(2) If a person attends in respect of more cases than one he shall not be allowed more than a proportionate part of the allowance in each case.
- Time witness away from home, etc., to be considered** 8. (1) No full day allowance under these Rules shall be ordered to be paid to a witness unless the witness is necessarily detained away from his home or place of business or employment for at least 4 hours for the purpose of giving evidence.

[Subsidiary]

(2) If the time during which the witness is necessarily so detained be less than 4 hours he shall not receive more than one-half of the allowance which he would have received had he been detained for the full day:

Provided that this provision shall not apply where the Court is satisfied that a witness though absent for less than 4 hours necessarily loses in consequence of his attendance his whole day's wages or earnings.

9. Witnesses and interpreters attending court in any criminal case or matter may in addition, in the discretion of the presiding magistrate, be allowed travelling and maintenance expenses reasonably and actually incurred.

Travelling
and maintenance

SCHEDULE

(Rule 7 (1))

1. To interpreters, \$4 per day.
2. To expert witnesses such allowances as the court may consider reasonable.
3. To professional men, merchants, and bankers not less than \$6 per day and not more than \$14 per day.
4. To tradesmen, artisans, mechanics, overseers, clerks, and store assistants not less than \$2 per day and not more than \$6 per day.
5. To labourers, \$1 per day.
6. To persons not coming within any of the above classes and to females and children such allowances as the court may consider reasonable.

(7) MAGISTRATES' COURTS (FEES IN LAND CAUSES AND MATTERS) RULES L.N. 65/78

1. These Rules may be cited as the Magistrates' Courts (Fees in Land Causes and Matters) Rules. Citation
2. In these Rules— Interpretation
"court" means a magistrates' court composed of 5 members under the provisions of section 7 (4) of the Ordinance or deemed to be so composed.
3. The fees and costs payable in respect of the matters specified in the Schedule shall be as therein prescribed. Schedule of fees
4. Subject to these Rules, such of the prescribed fees or costs as are payable in a cause or proceeding shall be paid by the party concerned. Party concerned to pay fees and costs
5. A court, may on account of the poverty of any person, order the waiver, reduction or refund of any fee or costs. Waiver of fees or costs
6. (1) In the case of the determination of a boundary— Payment of fees and costs in boundary determinations
 - (a) if the boundary claimed by one of the parties is found to be correct the other party or parties shall be ordered by the court to pay the prescribed fee and costs or equal parts thereof;
 - (b) if none of the boundaries claimed by the parties is found to be correct each party shall be ordered by the court to pay an equal part of the prescribed fee and costs.

[Subsidiary]

(2) For the purpose of giving effect to an order under paragraph (1) the court may further order the refund either in whole or in part of any fee or costs which have already been paid.

Payment of fees or costs in or arising on court's own motion

7. Whenever a cause, proceeding or other matter is commenced or arises on a court's own motion the court may order payment of the appropriate prescribed fee or costs by any person who has an interest therein or where there is more than one such person by all these persons in equal parts.

Penalty for failure to comply with court's order as to payment of fees

8. (1) Every person ordered by a court under these Rules to pay a fee or part of a fee or any costs shall comply with that order within 14 days or within 14 days of the determination of any appeal arising out of the proceedings in which the order was made.

Recovery of fees

(2) Any person who wilfully contravenes paragraph (1) shall be dealt with by the court by the issue of a warrant to such person to show cause why the fees or other costs have not been paid and if the court is not satisfied with the explanation given the court may issue a distress warrant for the seizure of the goods and chattels of that person.

Court entitled to charge for mileage

9. The court shall be entitled to make a charge for costs in respect of the number of miles which the court has to travel in the case of the determination of any boundary, or the visitation of the court to any plot of land, in accordance with the Schedule and such costs shall be paid to, or a proportion thereof deposited with, the Clerk of Court before the court travels to the boundaries or plot of land in question.

SCHEDULE

(Rule 3)

PART I

ADMINISTRATION AND PARTITION OF ESTATES

	\$	c
1. For the non-contentious administration and partition of an estate ..	1	00
2. For the administration and partition of an estate where the claimants are not in agreement	3	00

PART II

BOUNDARY DETERMINATIONS

1. For the determination of a boundary	5	00
2. For the confirmation of a boundary	2	00

PART III

REGISTRATION AND INSPECTION OF REGISTERS

1. For every entry in a register (unless a fee has already been paid in respect of any proceedings in consequence of which the entry is made in which case no fee shall be payable)	1	00
2. For each certified true copy of a folio in a register	50	
3. For an inspection of a register by a member of the public	20	
4. For a search of a register by the Registrar	20	

[Subsidiary]

PART IV

APPEALS

	\$	c
1. For an appeal against a boundary determination	5	00
2. For an appeal against any other determination or judgment	3	00

PART V

MISCELLANEOUS

1. For all causes or proceedings not otherwise referred to in this Schedule	2	00
2. Rate per mile to be charged by court	1	50

(8) MAGISTRATES' COURTS (PRESCRIBED FORMS) RULES

L.N. 68/78

1. These Rules may be cited as the Magistrates' Courts (Prescribed Forms) Rules and shall be deemed to have come into force at the same time as the principal Ordinance. Citation and commencement

2. (1) The forms contained in the Schedule to these Rules shall be the prescribed forms to be used in the magistrates' court for the purposes of the principal Ordinance; Forms in Schedule to be used in magistrates' courts

Provided that the forms heretofore used in the magistrates' courts and the island courts may continue to be used for a period of 1 year from the coming into force of the Ordinance, or such other time as may be stipulated by rules of court, with such alterations modifications and adaptations as may be necessary to bring them into conformity with these Rules.

(2) Where any form contained in the Schedule to these Rules does not entirely suit any particular set of circumstances such form may be altered, modified or adapted to suit those circumstances. Form in Schedule may be adapted, altered and modified

3. Form 1 shall be the prescribed form for the purposes of Rule 3 of the Magistrates' Courts Rules (hereinafter called the principal Rules). Form 1 (Rule 3 of the Magistrates' Courts Rules)

4. Form 2 shall be the prescribed form for the purposes of Rule 6 of the principal Rules. Form 1 (Rule 6 of the principal Rules)

5. Form 3 shall be the prescribed form for the purposes of Rule 7 of the principal Rules. Form 3 (Rule 7 of the principal Rules)

6. Form 4 shall be the prescribed form for the purposes of Rules 9 and 10 of the principal Rules. Form 4 (Rules 9 and 10 of the principal Rules)

7. Form 5 shall be the prescribed form for the purposes of Rule 11 (1) of the principal Rules. Form 5 (Rule 11 (1) of the principal Rules)

8. Form 6 shall be the prescribed form for the purposes of Rule 12 (1) of the principal Rules. Form 6 (Rule 12 (1) of the principal Rules)

[Subsidiary]

- Form 7 (Rule 12 (2) of the principal Rules) 9. Form 7 shall be the prescribed form for the purposes of Rule 12 (2) of the principal Rules.
- Form 8 (Rule 16 of the principal Rules) 10. Form 8 shall be the prescribed form for the purposes of Rule 16 of the principal Rules.
- Form 9 (Rule 17 of the principal Rules) 11. Form 9 shall be the prescribed form for the purposes of Rule 17 of the principal Rules.
- Form 10 (Rule 18 (2) of the principal Rules) 12. Form 10 shall be the prescribed form for the purposes of Rule 18 (2) of the principal Rules.
- Form 11 (Rules 33 and 34 of the principal Rules) 13. Form 11 shall be the prescribed form for the purposes of Rules 33 and 34 of the principal Rules.
- Forms 12 and 13 (Rule 46 of the principal Rules) 14. Form 12 and Form 13 shall be the prescribed forms for the purposes of Rule 46 of the principal Rules.
- Forms 14 and 15 (Sections 40 and 107 of Cap. 17) 15. Form 14 and Form 15 shall be the prescribed forms for the purposes of section 40 and section 107 of the Criminal Procedure Code where a magistrates' court considers it necessary for keeping the peace or maintaining good behaviour that a person should enter a recognisance with or without sureties or where a magistrates' court or a police officer releases a person on bail with or without sureties other than pending an appeal.
- Form 16 (Section 89 of Cap. 17) and Rule 6 of these Rules) 16. Form 16 shall be the prescribed form for the purposes of section 89 of the Criminal Procedure Code and may be used instead of Form 4 prescribed by Rule 6 in any case where an accused has been summoned to attend the court and has failed to do so.
- Form 17 (Section 128 of Cap. 17) 17. Form 17 shall be the prescribed form for the purposes of section 128 of the Criminal Procedure Code and may be used in any case where a witness has been properly summoned in a criminal case and has failed to attend the court.
- Form 18 (Section 189 of Cap. 17) 18. Form 18 shall be the prescribed form for the purposes of section 189 of the Criminal Procedure Code and may be used for the remand of an accused in custody on adjournment of the hearing.
- Form 19 (Section 190 of Cap. 17) 19. Form 19 shall be the prescribed form for the purposes of section 190 of the Criminal Procedure Code and may be used for the apprehension or arrest of an accused person who fails to appear in court after an adjournment of the hearing.
- Form 20 (Section 201 of Cap. 17) and Rule 10 of these Rules) 20. Form 20 shall be the prescribed form for the purposes of section 201 of the Criminal Procedure Code and may be used instead of Form 8 prescribed by Rule 10 when an accused is convicted and committed to prison.
- Form 21 (Section 210 of Cap. 17) 21. Form 21 shall be the prescribed form for the purposes of taking depositions at preliminary inquiries in the long form pursuant to section 210 of the Criminal Procedure Code.

- | | |
|---|--|
| | [Subsidiary] |
| 22. Form 22 shall be the prescribed form for the purposes of recording the statement of the accused in evidence at a preliminary inquiry pursuant to section 214 of the Criminal Procedure Code. | Form 22
(Section 214
of Cap. 17) |
| 23. Form 23 shall be the prescribed form for the commitment of an accused in custody for trial after a preliminary inquiry has been held as laid down in section 214 of the Criminal Procedure Code. | Form 23
(Section 214
of Cap. 17) |
| 24. Form 24 shall be the prescribed form for the commitment of a corporation for trial under the procedure laid down in section 218 (2) of the Criminal Procedure Code. | Form 24
(Section 218
(2) of Cap.
17) |
| 25. Form 25 shall be the prescribed form for the commitment of a witness for refusing to enter into a recognisance to give evidence on the commitment of an accused for trial after a preliminary inquiry pursuant to section 221 of the Criminal Procedure Code. | Form 25
(Section 221
of Cap. 17) |
| 26. Form 26 shall be the prescribed form for the conditional binding over or treating as being bound over of witnesses to give evidence in the High Court after an accused has been committed for trial after a preliminary inquiry pursuant to section 223 of the Criminal Procedure Code. | Form 26
(Section 223
of Cap. 17) |
| 27. Form 27 shall be the prescribed form for the notice requiring the attendance of witnesses bound over or treated as having been bound over conditionally pursuant to section 223 of the Criminal Procedure Code. | Form 27
(Section 223
of Cap. 17) |
| 28. Form 28 shall be the prescribed form for the summoning of assessors pursuant to section 177 of the Criminal Procedure Code. | Form 28
(Section 177
of Cap. 17) |
| 29. Form 29 shall be the prescribed form for the summoning of an interpreter to interpret at a trial under the provisions of section 182 and section 240 of the Criminal Procedure Code. | Form 29
(Sections 182
and 240 of
Cap. 17) |
| 30. Form 30 shall be the prescribed form for the warrant of commitment of a convict to prison and shall be an alternative to Form 8 prescribed for the purposes of Rule 16 of the Magistrates' Courts Rules. | Form 30
(Alternative
to Form 8
under Rule
30 of the
principal
rules) |
| 31. Form 31 shall be the prescribed form for the warrant of commitment to prison of a convict who, having been fined and sentenced to imprisonment in default, has defaulted in payment of his fine. | Form 31
(commitment
in default of
payment of
fine) |
| 32. Form 32 shall be the prescribed form for the warrant to levy distress upon a convict who has defaulted in payment of a fine imposed upon him. | Form 32
(Warrant to
levy distress
on non-
payment of
fine) |
| 33. Form 33 shall be the prescribed form for the warrant of commitment to prison where there are not sufficient goods and chattels upon which to levy distress in respect of non-payment of a fine. | Form 33
(Warrant of
commitment
where dis-
tress for fine
insufficient) |
| 34. Form 34 shall be the prescribed form for the warrant to levy distress for costs upon an order of dismissal of a charge. | Form 34
(Warrant to
levy distress
for costs) |

[Subsidiary]

Form 35
(Warrant of commitment where distress for costs insufficient)

35. Form 35 shall be the prescribed form for the warrant of commitment to prison where there are not sufficient goods and chattels upon which to levy distress in respect of non-payment of costs upon an order of dismissal of a charge.

Form 36
(Information to ground a search warrant)

36. Form 36 shall be the prescribed form for bringing the information to ground a search warrant to a presiding magistrate, a magistrate or a justice of the peace pursuant to section 101 of the Criminal Procedure Code.

Form 37
(Form for search warrant)

37. Form 37 shall be the prescribed form for a search warrant pursuant to section 101 of the Criminal Procedure Code.

SCHEDULE

FORMS

FORM 1—(Rule 3)

MAGISTRATES' COURTS ORDINANCE

(CAP. 52)

CHARGE

Criminal Case Number /
In the Magistrates' Court of and for
the District of

(Here put the name and address of the person making the charge)

STATES (on oath) that

(Here put the name and address of the person or persons charged)

has committed (or is suspected of having committed)* the following offence (or offences)*—

Statement of Offence

(Here put the offence alleged and the Ordinance or Regulation and the section of the Ordinance or Regulation alleged to have been broken)

Particulars of Offence

(Here put the name of the accused, the date and place of the offence, the District in which it was committed the particulars of the offence in such a way as to make it reasonably clear to the accused with what he is charged, and if there is a victim, the victim's name if it is known)

NOTE: Each offence (if more than 1) should be set out separately and numbered consecutively as First Count, Second Count etc.

[Subsidiary]

*Taken or sworn before me Presiding Magistrate/magistrate of the above-mentioned Magistrates' Court. this day of 19

*Delete that which is not applicable *Presiding Magistrate/Magistrate of Magistrates' Court

FORM 2—Criminal (Rule 6)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

SUMMONS

Criminal Case Number / In the Magistrates' Court of and for the District of

To (Here put the name and address of the person charged)

You are hereby commanded to appear before the above-mentioned Court sitting at on the day of 19..... at o'clock in the fore/after/noon there to answer a charge for the following offence (offences)*—

Statement of Offence

(Here put the offence alleged and the Ordinance or Regulation and the section of the Ordinance or the Regulation alleged to have been broken)

Particulars of Offence

(Here put the name of the accused, the date and place of the offence, the District in which it was committed, the particulars of the offence in such a way as to make it reasonably clear to the accused with what he is charged, and if there is a victim, the victim's name if it is known).

NOTE: Each offence (if more than 1) should be set out separately and numbered consecutively as First Count, Second Count etc.

Dated this day of 19

*Presiding Magistrate/Magistrate

*Delete that which is not applicable.

[Subsidiary]

FORM 3—Criminal (Rule 7)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

IN THE MAGISTRATES' COURT FOR THE DISTRICT
AFFIDAVIT OF SERVICE

I
(Here put name and address of person who is making the affidavit)
DO MAKE OATH and say that I did on the day of
19.... serve a true copy of the within-written summons
on the person to whom the same is addressed by delivering the same to
..... at

.....
Signature of person making oath

Sworn at
before me this
day of 19.....

.....
Person taking oath

FORM 4—Criminal (Rules 9 and 10)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT TO APPREHEND PERSON CHARGED

Criminal Case Number /
In the Magistrates' Court of and for
the District of

To: Each and all Police Officers of and for the Gilbert Islands.

BRING
(Here put the name and the address of the person to be apprehended)
BEFORE this Court to answer a charge laid against him/her by

.....
(Here put the name and the address of the person making the charge)
and substantiated by oath that he committed the following offence (offences)*

Statement of Offence

(Here put the offence alleged and the Ordinance or Regulation and the section
of the Ordinance or the Regulation alleged to have been broken)

Particulars of Offence

[Subsidiary]

(Here put the name of the accused, the date and place of the offence, the District in which it was committed, the particulars of the offence in such a way as to make it reasonably clear to the accused with what he is charged, and if there is a victim, the victim's name if it is known).

NOTE: Each offence (if more than 1) should be set out separately and numbered consecutively as First Count, Second Count etc.

Dated this day of19....

.....
*Presiding Magistrate/Magistrate

*Delete that which is not applicable.

FORM 5—Criminal (Rule 11)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT TO REMAND PERSON CHARGED

Criminal Case Number /
In the Magistrates' Court of and for
the District of

To: Each and all Police Officers in the Gilbert Islands and the Officer in Charge of the Prison athas been brought

(Here put place of prison)

before me under arrest to answer a charge laid against him that he did

(Here state the charge and the section or regulation number and the name of the law under which it was made)

.....
You, the said Police Officers, are therefore commanded to take
..... to the said prisonand there deliver him

(Here put name of person charged)
together with this warrant to the Officer in Charge thereof who is hereby directed to receive him into custody in the said prison and there keep him safely until theday of 19.... and then have him at

.....
(Here put the place where the Court is to sit)
atato'clock in the
noon before the Court there sitting.

Signed by me thisday of19....

.....
Presiding Magistrate/Magistrate

[Subsidiary]

FORM 6—Criminal (Rule 12 (1))

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

SUMMONS TO WITNESS

Criminal Case Number /
In the Magistrates' Court of and for
the District of

To:
(Here put name and address of witness)
WHEREAS a charge has been made by
(Here put name of the person making the charge)
that
(Here put name of the person charged)
has committed an offence under
(Here put section or regulation number
and the name of the law under which the charge is made)

AND it appears to me that you are likely to give or produce material evidence
on behalf of
(Here put either the person charged or the person making the
charge)

and that you will not appear voluntarily before the Court for that purpose.
YOU are therefore commanded to appear before the Court sitting at
on theday of19.... ato'clock in the
..... noon to testify what you know in the matter and to bring with you
and produce thereat:.....

(Here put thing(s) to be produced)

Dated thisday of19....

.....
Presiding Magistrate/Magistrate

FORM 7—Criminal (Rule 12 (2))

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT TO APPREHEND WITNESS

Criminal Case Number /
In the Magistrates' Court of and for
the District of

To: Each and all the Police Officers in the Gilbert Islands

WHEREAS a charge has been made by
(Here put the name and address of the

[Subsidiary]

..... against
person making the charge) (Here put the name
.....
and address of the person charged)

AND it appears to me by the oath of
that
(Here put name and address of witness)
will not attend to give or produce evidence on behalf of the
(Here put either
.....
the person charged or the person making the charge)
unless compelled to do so.

You, the said Police Officers, are therefore commanded to bring the said
..... before this Court sitting at
(Here put name of witness)
..... on the day of 19..... at
o'clock in noon to testify what he knows in the matter and to bring
him and produce thereat
(Here put any documents, etc.,
.....
to be produced)

Signed by me this day of 19.....

.....
Presiding Magistrate/Magistrate

FORM 8—Criminal (Rule 16)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT OF COMMITMENT

Criminal Case Number /
In the Magistrates' Court of and for
the District of

To: Each and all the Police Officers in the Gilbert Islands and to the Officer
in Charge of the Prison at
(Here put place of prison)

..... was on the day of 19.....
(Here put name of person committed to prison) (Here put date of conviction)
convicted before this Court for

(Here state the offence which the person committed was convicted of and the
section or regulation number and the name of the law under which the charge
was laid)

AND the above-mentioned Magistrates' Court has adjudged the said
..... for this offence to be
(Here put name of person committed in prison)

[Subsidiary]

imprisoned in the above-mentioned prison for a term of
(Here put term of imprisonment)

..... from
(Here put date from which sentence is to run)

You, the said Police Officers, are therefore commanded to take the said
(Here put the name of the person committed)

safely to the said prison and there deliver him to the Officer in Charge thereof
who is hereby directed to receive him and to imprison him for the said term of

.....
(Here repeat term of imprisonment)

Signed by me this day of 19

.....
Presiding Magistrate/Magistrate

FORM 9—Civil (Rule 18 (2))

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WRIT OF SUMMONS

Civil Case Number /
In the Magistrates' Court of and for
the District of

BETWEEN
(Here put name and address of person making claim)

PLAINTIFF

AND
(Here put name and address of person against whom claim is made)

DEFENDANT

To:
(Here put name and address of defendant)

YOU are commanded to appear before this Court sitting at
on the day of 19 at o'clock in the
..... noon to answer a claim against you by
(Here put "fore" or "after")

.....
(Here put name and address of plaintiff)

AND TAKE NOTICE that if you fail to appear as aforesaid the Court may
proceed to hear and determine the claim in your absence.

Dated this day of 19

.....
Presiding Magistrate/Magistrate

[Subsidiary]

PARTICULARS OF CLAIM

The Plaintiff claims (here state the particulars of the claim and the order of the Court which is sought).

Sum claimed .. \$
Court fees .. \$

Total .. \$

Signature of Plaintiff

FORM 10—Civil (Rule 18 (2))

MAGISTRATES' COURTS ORDINANCE

(CAP. 52)

SUBPOENA

Civil Case Number /
In the Magistrates' Court of and for
the District of

BETWEEN
(Here put name and address of person making the claim)

PLAINTIFF

AND
(Here put name and address of person against whom claim is made)

DEFENDANT

To:
(Name and address of witness)

WHEREAS a writ of summons has been filed in an action between the above-mentioned Plaintiff and the above-mentioned Defendant.

AND WHEREAS the above-mentioned
(Here state plaintiff or defendant, as the case may be)

has requested the Court to issue a subpoena to you to give evidence at the hearing:

YOU are therefore commanded to attend before this Court sitting at
on the day of
(Here put place where the Court is to sit)

19 at o'clock in the noon in order
(Here put "fore" or "after")

to give evidence in the above-mentioned action on behalf of the said party.
Signed by me this day of 19

Presiding Magistrate/Magistrate

[Subsidiary]

FORM 11—Appeals (Rules 33 and 34)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

NOTICE OF APPEAL

*CRIMINAL } JURISDICTION *CIVIL }

IN THE MATTER OF *Criminal/Civil Case Number BETWEEN AND

In the Magistrates' Court of and for the District of

To: The Clerk of the above-mentioned Magistrates' Court.

TAKE NOTICE that I, the *plaintiff *defendant in the above-mentioned proceedings intend to appeal against the

* { 1. sentence } given therein by the above-mentioned Magistrates' Court { 2. conviction } on the { 3. decision } day of 19

UPON the grounds that (Here set out reasons for appeal)

Dated at this day of 19

Appellant

*Delete that which is not applicable

FORM 12—Appeals (Rule 46)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

RECOGNISANCE OF BAIL OF APPELLANT

Criminal Case Number / In the Magistrates' Court of and for the District of

BE IT REMEMBERED that whereas (Here put name of person convicted) was convicted on the day of 19 and was sentenced to (Here put date of conviction) by the above-mentioned Magistrates' Court (Here put sentence) and is now in lawful custody and whereas he has now duly appealed against his

[Subsidiary]

conviction and sentence to the High Court and has been granted bail by the said

(Here put either "Magistrates" or "High" as the case may be) Court upon his entering into his own recognisance in the sum of \$ (Here put amount of his

and with own recognisance) (Here put the number of sureties) sureties each in the sum of \$ (Here put amount of sureties)

THE SAID personally (Here put name of person convicted) comes before me and acknowledges himself to owe to Her Majesty the Queen the said sum of \$ of good and lawful money of (Here put amount of the recognisance of person convicted) the Gilbert Islands to be made and levied of his goods, chattels, lands and tenements to the use of Her Majesty the Queen, Her Heirs and Successors, if the said fail in the condition hereon endorsed. (Here put name of person convicted)

TAKEN AND ACKNOWLEDGED this day of 19 at before me:

Magistrate of the above-named Magistrates' Court or Judge of the High Court

The condition of the above-written recognisance is such that if the said shall personally appear and (Here put name of person convicted) surrender himself at and before the High Court at each and every hearing of his appeal to such Court and at the final determination thereof and to then and there abide by the judgment of the said Court, and in the meantime not to depart out of the Gilbert Islands, then this recognisance to be void or else stand in full force and effect.

FORM 13—Appeals (Rule 46)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

RECOGNISANCE OF BAIL OF APPELLANT'S SURETIES

Criminal Case Number / In the Magistrates' Court of and for the District of

BE IT REMEMBERED that on this day of 19 (Here put day on which recognisance given) of and (Names and addresses of sureties) of personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several sums following that

[Subsidiary]

is to say the said the sum of
 (Here put name of first surety)
 and the said
 (Here put amount of first surety) (Here put the name of the second surety)
 the sum of
 (Here put the amount of the second surety)
 of good and lawful money of the Gilbert Islands to be made and levied of their
 goods and chattels and lands and tenements respectively to the use of Her
 Majesty the Queen, Her heirs and Successors if
 (Here put name of person convicted)
 now in lawful custody at
 (Here put place person convicted is in custody)
 fail in the condition hereon endorsed.
 TAKEN AND ACKNOWLEDGED before me the undersigned the day and
 the year first hereinbefore written.

.....
 Clerk or Magistrate of the Magistrates'
 Court or Registrar of the High Court

CONDITION

The condition of the above-written recognisance is such that whenever the
 said having been convicted of an offence
 (Here put name of person convicted)
 by the above-mentioned Magistrates' Court and sentenced to imprisonment for
 by it for such offence and having duly appealed
 (Here put term of imprisonment)
 against his conviction (and sentence) and been granted bail upon his entering
 into a recognisance in the sum of \$
 (Here put amount of convicted person's own recognisance)
 with sureties
 (Here put number of sureties)
 each in the sum of \$ if the said
 (Here put amount of sureties)

 (Here put name of person convicted)
 shall personally appear and surrender himself at and before the High Court at
 each and every hearing of his appeal to such Court and at the final determina-
 tion thereof and not depart or be absent from the said Court and at every such
 hearing without the leave of the Court and in the meantime not to depart out of
 the Gilbert Islands then this recognisance to be void or else stand in full force
 and effect.

FORM 14—Criminal (Prescribed
 Forms Rule 15)

MAGISTRATES' COURTS ORDINANCE
 (CAP. 52)

RECOGNISANCE (WITHOUT SURETIES)
 (Criminal Procedure Code sections 40 and 107)

IN THE MAGISTRATES' COURT FOR THE DISTRICT
 I, the undersigned, acknowledge myself to owe to our Sovereign Queen

[Subsidiary]

Elizabeth II the sum written opposite my signature hereto, to be raised by seizure and sale of my goods if the condition hereon is not fulfilled.

Dated thisday of19.....

Signature	Address	Description	Sums

The condition of the within-written recognisance is as follows—

- (a) If the within-namedappears before this Court on, at, to answer a charge contrary to then the said recognisance shall be void, and otherwise it shall be in force.
- (b) If the within-namedkeeps the public peace and is of good behaviour towards all persons (and especially towards) during , then the said recognisance shall be void, and otherwise it shall be in force.
- (c) If the within-named appears before this Court on, at, and then and there prosecutes (and/or gives evidence on) a charge contrary to then the said recognisance shall be void, and otherwise it shall be in force.

FORM 15—Criminal (Prescribed Forms Rule 15)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

RECOGNISANCE (WITH SURETIES)
(Criminal Procedure Code sections 40 and 107)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

We, the undersigned, severally acknowledge ourselves to owe to our Sovereign Queen Elizabeth II the sums set opposite our respective signatures hereto, to be raised by seizure and sale of our several goods if the condition hereon endorsed is not fulfilled.

Dated thisday of19.....

Signatures	Addresses	Description	Sums

[Subsidiary]

The condition of the within-written recognisance is as follows—

- (a) If the within-named appears before this Court on at to answer a charge contrary to then the said recognisance shall be void, and otherwise it shall be in force.
- (b) If the within-named keeps the public peace and is of good behaviour towards all persons (and especially towards) during then the said recognisance shall be void, and otherwise it shall be in force.
- (c) If the within-named appears before this Court on at and then and there prosecutes (and/or gives evidence on) a charge contrary to then the said recognisance shall be void, and otherwise it shall be in force.

FORM 16—Criminal (Prescribed Forms Rule 16)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT TO APPREHEND ACCUSED WHERE SUMMONS IS DISOBEYED (Criminal Procedure Code section 89)

IN THE MAGISTRATES' COURT FOR THE DISTRICT

To All Police Officers within the Gilbert Islands

Whereas on the day of 19....., (a) of (b) (hereinafter called the accused was summoned to appear before the Magistrates' Court at on the day of 19....., at o'clock in the noon to answer the following charge(s)—

Statement of Offence

(c)

Particulars of Offence

(d)

And whereas an oath has been made that the accused was duly served with the summons but did not appear:

These are to command you in Her Majesty's name to arrest the defendant and bring him before me at the Magistrates' Court at to answer the said charge(s) and be dealt with according to law.

Dated the day of 19.....

Presiding Magistrate/Magistrate

[Subsidiary]

- (a) Insert full name of defendant.
- (b) Insert full address and occupation of defendant.
- (c) Insert offence naming Ordinance or other enactment and section contravened.
- (d) Insert brief particulars of offence in ordinary language.

FORM 17—Criminal (Prescribed Forms Rule 17)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT WHERE WITNESS HAS NOT OBEYED A SUMMONS (Criminal Procedure Code section 128)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands of Not having appeared in obedience to a summons requiring his attendance on theday of19..... at the Magistrates' Court at to give evidence on behalf of of on a charge against of

These are to command you in Her Majesty's name to arrest and bring before me ato'clock in thenoon on theday ofthe said to be dealt with according to law.

Dated theday of19.....

Presiding Magistrate/Magistrate Justice of the Peace

FORM 18—Criminal (Prescribed Forms Rule 18)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF COMMITMENT FOR SAFE CUSTODY ON ADJOURNMENT OF HEARING (Criminal Procedure Code section 189)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge of the prison at

[Subsidiary]

Whereas the hearing of a charge against
has been adjourned to theday of19...., at
..... o'clock in thenoon at the Magistrates' Court at
.....

These are to command you the said Police Officers in Her Majesty's name
thatbe conveyed to the prison
atand there delivered to the officer in charge
on19...., and then have him before this Court
at the said time and place.

Dated theday of19....

.....
Presiding Magistrate/Magistrate

FORM 19—Criminal (Prescribed
Forms Rule 19)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT WHERE ACCUSED HAS NOT ATTENDED ON ADJOURNMENT
(Criminal Procedure Code section 190)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands

Whereas on theday of19....,
of
hereinafter called the accused, appeared before the Magistrates' Court at
.....to answer a charge(s) made on the complaint
ofofthat he the said accused did commit
the following offence(s)—

Statement of Offence

Particulars of Offence

And the hearing of the said charge(s) was adjourned to theday
of19...., ato'clock in thenoon
at the Magistrates' Court at at which time and place
the accused failed to appear.

These are to command you the said Police Officers to arrest the accused and
have him before us forthwith at the Magistrates' Court.

Dated theday of19....

.....
Presiding Magistrate/Magistrate

[Subsidiary]

FORM 20—Criminal (Prescribed
Forms Rule 20)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

CONVICTION ORDER
(Criminal Procedure Code section 201)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

Be it remembered that on theday of19,
atin the Gilbert Islands
..... of is
convicted before me of the following offence—

Statement of Offence

Particulars of Offence

(a)
And I adjudge him for his said offence to be imprisoned in Her Majesty's
prison atand there to be kept for
..... from this day:

And I adjudge him for his said offence to forfeit and pay the sum of
(b) to be paid and applied according
to law and also to pay to the said
the sum of for his costs in this behalf and if the
said several sums be not paid forthwith (or, on or before
next) I adjudge the said to be imprisoned in
Her Majesty's prison at and there to be
kept for from this day unless the said several sums
(and the costs and charges of conveying the said to
the said prison) shall be sooner paid.

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

.....
Presiding Magistrate/Magistrate

- (a) Delete whichever is inapplicable.
- (b) State the penalty and compensation (if any).....

[Subsidiary]

FORM 21—Criminal (Prescribed
Forms Rule 21)

MAGISTRATES' COURTS ORDINANCE
- (CAP. 52)

DEPOSITION AT PRELIMINARY INQUIRY AND TRIAL
(Criminal Procedure Code section 210)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

In the matter of a charge against
of
in the presence and hearing of
deposes on oath (or as the case may be) as follows—

[Subsidiary]

FORM 22—Criminal (Prescribed Forms Rule 22)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

STATEMENT OF ACCUSED (Criminal Procedure Code section 214)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

Before the Magistrates' Court at of (hereinafter called the accused) stands charged this day of 19....., with the offence hereinbefore particularly set out:

Statement of Offence

Particulars of Offence

And the witnesses for the prosecution having each severally been examined in the presence of the accused:

And the said charge being read and its nature explained in ordinary language to the accused:

The accused is now addressed by the Court as follows—

"You will have an opportunity to give evidence on oath before me and to call witnesses. But first I am going to ask you whether you wish to say anything in answer to the charge.

You need not say anything unless you wish to do so; and you have nothing to hope from any promise, and nothing to fear from any threat, that may have been held out to induce you to make any admission or confession of guilt. Anything you say will be taken down and may be given in evidence at your trial. Do you wish to say anything in answer to the charge?"

Whereupon the accused says as follows— (or makes no reply)

(And the above statement of the accused has been read over to him; and the accused has been told that he may sign it if he wishes;)

And the accused has been given an opportunity to give evidence himself and to call witnesses.

I certify that above statement was given in my presence and hearing at the day of 19....., and that it contains accurately the whole statement (or evidence) given by the accused:

..... Presiding Magistrate/Magistrate

[Subsidiary]

FORM 23—Criminal (Prescribed Forms Rule 23)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF COMMITMENT IN CUSTODY FOR TRIAL (Criminal Procedure Code section 218)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Prison Officers within the Gilbert Islands and to the Officer in Charge of the prison at of (hereinafter called the accused) having been charged this day before the Magistrates' Court held at with the following offence—

Statement of Offence

Particulars of Offence

And the said Court after inquiry into the said Offence having committed the accused for trial to the High Court to be held at on theday of19.....

These are to command you the said Police Officers in Her Majesty's name to convey and deliver the said accused to the officer in charge of the prison at who is hereby directed safely to keep him until he shall be delivered in due course of law.

Dated theday of19.....

Presiding Magistrate/Magistrate

FORM 24—Criminal (Prescribed Forms Rule 24)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

ORDER COMMITTING CORPORATION FOR TRIAL (Criminal Procedure Code section 218)

To—

The Attorney-General.

..... Limited (hereinafter called the accused corporation) was this day charged before the Magistrates' Court held at with the following offence—

[Subsidiary]

Statement of Offence

Particulars of Offence

And the said Court after inquiry into the said offence having determined to commit the accused corporation for trial to the High Court to be held at on the day of 19.....

You the Attorney-General are hereby authorised and empowered to file an information in respect of the said offence in the High Court.

Date the day of 19.....

.....
Presiding Magistrate/Magistrate

FORM 25—Criminal (Prescribed
Forms Rule 25)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO
RECOGNISANCE TO GIVE EVIDENCE
(Criminal Procedure Code section 221)

IN THE MAGISTRATES' COURT FOR THE DISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge of the prison at of having been charged this day before the Magistrates' Court held at with the following offence—

Statement of Offence

Particulars of Offence

And having then examined before the Court concerning the said offence, and being required by the Court to enter into a recognisance conditioned to attend and give evidence on the trial of refuses to do so:

These are to command you the said Police Officers in Her Majesty's name to convey and deliver the said to the officer in charge of the prison at who is hereby directed safely to keep the said until after his trial for the

[Subsidiary]

offence aforesaid unless in the meantime the said shall enter into such recognisance as aforesaid in the sum of \$ (with surety/sureties in the sum of \$ (each) conditioned to appear at the next Session of the High Court and there to give evidence upon the trial of any information against the said accused in respect of the said offence).

Dated the day of 19.....

.....
Presiding Magistrate/Magistrate

FORM 26—Criminal (Prescribed
Forms Rule 26)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

STATEMENT OF WITNESSES BOUND OVER OR
TREATED AS HAVING BEEN BOUND OVER CONDITIONALLY
(Criminal Procedure Code section 223)

IN THE MAGISTRATES' COURT FOR THE DISTRICT

REGINA

v.
.....

committed for trial at

List of witnesses whose attendance at the trial appears to the committing Court to be unnecessary and who have accordingly been bound over to attend the trial conditionally or have been treated as having been so bound over

NAME	ADDRESS	OCCUPATION	If notice to attend has subsequently been issued by the Clerk to the committing Court, the date of issue should be stated

Notice to attend the trial has been issued by me on the dates above-mentioned to those witnesses against whose names a date is inserted in the last column hereof.

Dated the day of 19.....

.....
Clerk of the Court

[Subsidiary]

FORM 27—Criminal (Prescribed Forms Rule 27)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

NOTICE REQUIRING ATTENDANCE OF WITNESS BOUND OVER, OR TREATED AS BOUND OVER, CONDITIONALLY (Criminal Procedure Code section 223)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To—

Whereas you were on theday of19...., bound over by a recognisance in the sum of \$..... to appear,* upon notice being given to you, at the Court specified in such notice and there to give evidence on the trial of

(or, (where witness has been treated as bound over conditionally insert instead after asterisk) at the next Session of the High Court or at such other Court as you should be directed, to give evidence on the trial ofand whereas notice was subsequently given to you that you would not be required to attend the trial unless you received notice:)

THIS IS TO GIVE YOU NOTICE that you ARE required to appear at the next Sessions of the High Court to be held at and there to give evidence accordingly, and that unless you do so the said recognisance will be forthwith enforced against you.

Dated theday of19....

..... Clerk of the Court (or, Registrar of the High Court)

FORM 28—Criminal (Prescribed Forms Rule 28)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

SUMMONS TO AN ASSESSOR (Criminal Procedure Code section 177)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

In the matter of a charge against

To—

You are required to attend theCourt aton theday of19...., ato'clock in thenoon to act as assessor at the trial of the above charge.

Dated attheday of19....

..... Presiding Magistrate/Magistrate

[Subsidiary]

FORM 29—Criminal (Prescribed Forms Rule 29)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

SUMMONS TO INTERPRETER (Criminal Procedure Code sections 182 and 240)

IN THE MAGISTRATES' COURT FOR THE DISTRICT

In the matter of a charge against of To of YOU, the above-named are hereby required to attend this Court at on the day of 19..... at o'clock in the noon, to act as interpreter to the trial of the above-mentioned.

..... Presiding Magistrate/Magistrate

FORM 30—Criminal (Prescribed Forms Rule 30)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF COMMITMENT OF A CONVICT WHERE THE PUNISHMENT IS BY IMPRISONMENT

IN THE MAGISTRATES' COURT FOR THE DISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge of the prison at

Whereas of was this day duly convicted before me of the following offence(s)—

Statement of Offence

Particulars of Offence

and it was thereby adjudged that the said for his offence(s) should be imprisoned in Her Majesty's Prison at and there to be kept for from this day.

[Subsidiary]

These are therefore to command you the said Police Officers to take the saidand convey him to the said prison and deliver him to the Officer in Charge thereof who is hereby directed to imprison him for the time aforesaid.

Dated theday of19.....

.....
Presiding Magistrate/Magistrate

FORM 31—Criminal (Prescribed
Forms Rule 31)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT OF COMMITMENT ON A CONVICTION AND IN
DEFAULT OF PAYMENT IMPRISONMENT

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge of the prison at

Whereasofwas this day convicted before us of the following offence(s)---

Statement of Offence

Particulars of Offence

and it was thereby adjudged that the saidfor his offence(s) should pay a fine ofor in default of payment be imprisoned in Her Majesty's Prison atand there to be kept forand whereas the saidhath made default.

These are therefore to command you the said Police Officers to take the saidand convey him to the said prison and deliver him to the officer in charge thereof who is hereby directed to imprison him the saidand there to keep him forfrom this day unless he shall pay a fine of \$ as aforesaid.

Dated theday of19.....

.....
Presiding Magistrate/Magistrate

[Subsidiary]

FORM 32—Criminal (Prescribed Forms Rule 32)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF DISTRESS UPON A CONVICTION FOR A FINE

IN THE MAGISTRATES' COURT FOR THE DISTRICT

To All Police Officers within the Gilbert Islands

Whereas of in the said Gilbert Islands was on the day of 19, duly convicted before us of the following offence(s)—(Please see reverse side)

And it was thereby adjudged that the said should for such offence pay a fine of \$ and should also pay to the sum of \$ for costs (and compensation):

And whereas the said being so convicted as aforesaid and being required to pay the said sums of \$ and \$ hath not paid the same but therein hath made default:

These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said and if within the space of days next after the making of such distress the said sums together with the reasonable charges of taking and keeping the distress shall not be paid that you do sell the said goods and chattels so by you distrained and do pay the money arising by such sale unto the Clerk of the Magistrates' Court at

..... District that he may pay and apply the same as by law directed and may render the overplus if any on demand to the said and if no such distress can be found then that you certify the same unto us to the end that such further proceedings may be had therein as to the law doth appertain.

Dated the day of 19

..... Presiding Magistrate/Magistrate

NOTE: If this warrant is executed outside the territorial limits of the jurisdiction of the Court issuing the same it must be endorsed by a Magistrate within the territorial limits of whose jurisdiction such property is found.

RETURN OF INSUFFICIENT DISTRESS

I, (insert rank and number), stationed at in the District of the Gilbert Islands hereby certify that, by virtue of this warrant, I have made diligent search for the money and goods of the above-named and that I can find no (sufficient) money or goods of him/her whereupon the sums specified in this warrant can be levied.

Dated the day of 19

[Subsidiary]

FORM 33—Criminal (Prescribed
Forms Rule 33)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS UPON
A CONVICTION FOR A FINE

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge
of the prison at

Whereas of was on
the day of 19....., duly convicted before us of the
following offence(s)—

Statement of Offence

Particulars of Offence

and it was thereby adjudged that the said should for such his
offence(s) pay a fine of \$ and should also pay to
the sum of \$ for costs (and compensation) and it was thereby ordered
that if the said sums should not be paid the said
should be imprisoned in Her Majesty's prison at
and there to be kept for

And whereas afterwards on the day of in the
year aforesaid we issued a warrant to all Police Officers within the Gilbert
Islands commanding them to levy the said sums of \$ and \$ by
distress and sale of goods and chattels of the said

And whereas it appears to us as well by the return of to
the said warrant of distress as otherwise that he hath made diligent search for
the goods and chattels of the said but that no sufficient
distress whereupon to levy the sum above-mentioned could be found.

These are therefore to command you the said Police Officers to take the
said and convey him to the prison at and
deliver him to the officer in charge thereof who is hereby directed to imprison
him and keep him for from this day unless the said sums and all
the costs and charges of the distress and of the commitment and conveying of
the said to the said prison shall be sooner paid.

Dated the day of 19.....

.....
Presiding Magistrate/Magistrate

[Subsidiary]

FORM 34—Criminal (Prescribed Forms Rule 34)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER OF DISMISSAL OF A CHARGE

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands

Whereas of was charged before us on the day of 19....., with the following offence(s)—

Statement of Offence

Particulars of Offence

whereupon the matter of the said charge(s) was duly considered by us and it manifestly appearing to us that the said charge(s) was/were not proved we therefore dismissed the same and adjudged that the said should pay to the said the sum of \$ for his costs incurred by him for his defence in this behalf and hath not paid the same but therein hath made default:

These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the same and if within days next after making of such distress the said sums together with the reasonable charges of taking and keeping the distress shall not be paid that you do sell the said goods and chattels so by you distrained and do pay the money arising by such sale unto the Clerk of the Magistrates' Court at that he may pay and apply the same as by law directed and may render the overplus if any on demand to the said and if no such distress can be found then that you certify the same unto us to the end that such further proceedings may be had therein as to the law doth appertain.

Dated the day of 19.....

..... Presiding Magistrate/Magistrate

NOTE: If this warrant is executed outside the territorial limits of the jurisdiction of the Court issuing the same it must be endorsed by a Magistrate within the territorial limits of whose jurisdiction such property is found.

RETURN OF INSUFFICIENT DISTRESS

I, (insert rank and number), stationed at in the District of the Gilbert Islands hereby certify that, by virtue of this warrant, I have made diligent search for the money and goods of the above-named and that I can

[Subsidiary]

find no (sufficient) money or goods of him/her whereupon the sum specified in this warrant can be levied.

Dated theday of19

FORM 35—Criminal (Prescribed Forms Rule 35)

MAGISTRATES' COURTS ORDINANCE (CAP. 52)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS UPON AN ORDER FOR DISMISSAL OF A CHARGE

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands and to the Officer in Charge of the prison at

Whereas on theday ofon the complaint ofofwas charged before us with the following offence(s)—

Statement of Offence

Particulars of Offence

and the several proofs adduced to us in that behalf being by us duly heard and considered and it manifestly appearing to us that the said charge(s) was/were not proved we therefore dismissed the same and adjudged that the said should pay to the saidthe sum of \$..... for his costs incurred by him in his defence in that behalf and we ordered that if the said sum for costs should not be paid the saidshould be imprisoned in Her Majesty's prison atand there to be kept for

And whereas afterwards on theday ofin the year aforesaid we issued a warrant to all Police Officers within the Gilbert Islands commanding them to levy the said sum of \$for costs by distress and sale of the goods and chattels of the said

And whereas it appears to us as well by the return ofto the said warrant of distress as otherwise that he hath made diligent search for the goods and chattels of the saidbut that no sufficient distress whereupon to levy the sum above-mentioned could be found:

These are therefore to command you the said Police Officers to take the saidand convey him to the prison atand deliver him to the officer in charge thereof who is hereby directed to imprison

[Subsidiary]

him forfrom this day unless the said sum and all costs and charges of the said distress amounting to a further sum of \$shall be sooner paid.

Dated theday of19.....

.....
Presiding Magistrate/Magistrate

FORM 36—Criminal (Prescribed
Forms Rule 36)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

INFORMATION TO GROUND SEARCH WARRANT
(Criminal Procedure Code section 101)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

(a)of (b)on his oath complains that onthe following goods of the value of \$....., viz.—

(c)were unlawfully carried away fromtoby some person or persons unknown, and that he has reasonable cause to suspect, and does suspect, that those goods, or some of them are concealed

(d)occupied byoffor the saidsays that—

(e)Sworn (affirmed) atthis day of19.....

.....
*Presiding Magistrate/Magistrate
Justice of the Peace*

- (a) Insert full name of complainant.
- (b) Insert full address and occupation of complainant.
- (c) Describe goods.
- (d) Describe place or premises in which goods are alleged to be concealed.
- (e) State grounds for suspicions that goods are there.

[Subsidiary]

FORM 37—Criminal (Prescribed
Forms Rule 37)

MAGISTRATES' COURTS ORDINANCE
(CAP. 52)

SEARCH WARRANT
(Criminal Procedure Code section 101)

IN THE MAGISTRATES' COURT FOR THEDISTRICT

To All Police Officers within the Gilbert Islands

(a)of (b) has this day made on
oath before the Court that

(c)
And it appears to the Court that (according to reasonable suspicion) the said
goods, or some of them, are concealed as aforesaid. You are therefore hereby
authorised and commanded in Her Majesty's name, with proper assistance, by
day (or night) (d) to enter the said
(e)
if necessary by force, and there diligently to search for the said goods, and if
the same or any thereof are found on search to bring the goods so found before
this Court, to be dealt with according to law.

Dated theday of19.....

.....
*Presiding Magistrate/Magistrate
Justice of the Peace*

- (a) Insert full name of complainants.
- (b) Insert full address and occupation of complainant.
- (c) As in information given in Form 36.
- (d) Cross out words "or night" when warrant is executed between the hours of sunrise and sunset.
- (e) Describe place or premises.



[Subsidiary]

SUBSIDIARY LEGISLATION

Establishment of a single Magistrates' Court under section 7 (5)

ESTABLISHMENT OF A MAGISTRATES' COURT NOTICE

L.N. 10/79

Commencement: 19 February 1979

There is hereby established a magistrates' court consisting of a single magistrate in the Banaba Magisterial District in addition to the magistrates' court already established there under section 3 (1) of the Magistrates' Courts Ordinance.

Language of courts order under section 41 (1)

MAGISTRATES' COURTS (LANGUAGE OF COURTS) ORDER

L.N. 14/80

Commencement: 1 January 1980

1. This Order may be cited as the Magistrates' Courts (Language of Courts) Citation Order.

2. Where any magistrates' court consisting of a single magistrate sitting alone and established under the provisions of section 7 (5) of the principal Ordinance is constituted by a magistrate who is not I-Kiribati the language of such court shall be English.

Language of Magistrates' Court with Single Non-I-Kiribati Magistrate to be English

3. In all magistrates' courts whether constituted by a single magistrate sitting alone or constituted by 3 or 5 magistrates sitting together, the language of such courts shall be I-Kiribati except as specified in paragraph 2.

Language of all other Magistrates' Courts to be I-Kiribati

Extension of criminal jurisdiction of magistrates' courts under section 28

EXTENSION OF ALL MAGISTRATES' COURTS JURISDICTION ORDER

L.N. 49/80

The jurisdiction of all magistrates' courts is extended to the trial of all offences contrary to the provisions of the Prises Ordinance (Cap. 75).