

CHAPTER 127**CRIMINAL PROCEDURE**

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(This Chapter comprises a consolidation of the Grand Sessions and Criminal Law (Procedure) Act, 1891, 1891-18 and the Abolition of Grand Juries Act, 1950, 1950-28.)

CHAPTER 127

CRIMINAL PROCEDURE

An Act to consolidate and amend the laws of Barbados relating to the administration of justice in criminal cases in Barbados.

1891-18.
1950-28.
1956-56.
1956-57.
1963-5.
L.N. 168/
1967.
1984-26.
1988/81.
1992-17.
1996-28.
1998-25.

[5th June, 1891] Commence-
ment.

1. This Act may be cited as the *Criminal Procedure Act*. Short title.

PART I

Preliminary

2. For the purposes of this Act, the expression Interpretation.

"finding of the indictment" includes the taking of an inquisition, the exhibiting of an information and the making of a presentment;

"High Court" means the High Court sitting for the trial of criminal cases;

"indictment" includes information, inquisition and presentment, as well as indictment, and also any plea, replication or other pleadings;

"property" includes goods, chattels, money, valuable securities and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

PART II

Procedure for Trial on Indictment

Proceedings
before High
Court sitting
for trial of
criminal
cases.
1956-56.

3. The proceedings before the High Court shall be subject to the laws of Barbados and according to the practice applicable to the trial of indictable offences in England.

Proceedings
for
indictment
of offenders.
1950-28.

4. (1) Subject to this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before the High Court, and where a bill of indictment has been so preferred, the Registrar shall, if he is satisfied that the requirements of subsection (2) have been complied with, sign the bill, and it shall thereupon become an indictment and be proceeded with accordingly.

Provided that if a Judge is satisfied that the said requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the Registrar to sign the bill and the bill shall be signed accordingly.

(2) Subject as hereinafter provided, no bill of indictment charging any person with an indictable offence shall be preferred unless either

1956-57.

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

(b) the bill is preferred by the direction or with the consent of a Judge or pursuant to directions given under section 11 of the *Perjury Act*.

Cap. 142.

(3) Where the person charged has been committed for trial, the bill of indictment may include, either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a magistrate in his presence, being counts which may lawfully be joined in the same indictment.

(4) A charge of a previous conviction of an offence or of being a habitual criminal may, notwithstanding that it was not included in the committal or in any such direction or consent mentioned in subsection (2), be included in any bill of indictment.

(5) Where a bill of indictment preferred otherwise than in accordance with subsections (2) to (4) has been signed by the Registrar, the indictment shall be liable to be quashed

Provided that

- (a) if the bill contains several counts, and the said provisions have been complied with as respects one or more of them, those counts only that were wrongly included shall be quashed under this subsection; and
- (b) where a person who has been committed for trial is convicted on any indictment or any count of an indictment, that indictment or count shall not be quashed under this subsection in any proceedings on appeal unless application was made at the trial that it should be so quashed.

(6) The reference in subsection (3) to facts or evidence disclosed in any examination or deposition taken before a magistrate in the presence of the person charged shall be construed as including a reference to facts disclosed in any written statement tendered under section 25B of the *Magistrates Jurisdiction and Procedure Act*. 1984-26.
Cap. 116.

5. Where a bill of indictment has been signed in accordance with section 4, the indictment shall be proceeded with in the same manner as it would have been proceeded with before the 17th August, 1950¹ if it had been found by a grand jury. Procedure after signing of indictment. 1950-28.

6. No person shall be put upon his trial by reason of the finding of any coroner's inquisition, but in every case in which a person is committed upon any such inquisition, a bill of indictment shall be preferred against such person in the same manner as if no such inquisition had been found. No person to be tried on coroner's inquisition.

7. (1) Any person being arraigned upon any indictment for any offence who pleads thereto a plea of "not guilty", shall, by such plea without any further form, be deemed to have put himself upon the country for trial, and the High Court shall in the usual manner order a jury for the trial of such person accordingly. Pleading to an indictment. 1992-17.

¹Date of commencement of the Abolition of Grand Jurors Act, 1950, 1950-28, section 3 of which is reprinted as section 4.

1992-17. (2) Where any person being arraigned upon or charged with any indictment for any offence stands mute or will not answer directly to such indictment, in every such case it shall be lawful for the High Court, if it so thinks fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

(3) *Repealed by 1992-17.*

(4) *Repealed by 1992-17.*

(5) In any plea *autrefois convict* or *autrefois acquit*, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the said offence charged in the indictment.

Power of
prisoner or
attorney-at-
law to
examine
witnesses
before
addressing
the jury.
1992-17.

8. Upon every trial on indictment for an offence, whether the prisoners or defendants or any of them are defended by attorney-at-law or not, each and every such prisoner or defendant, or his or their attorney-at-law respectively, may, before addressing the jury, at his discretion, elect to examine such witnesses as he or they may think fit and, when all the evidence is concluded, to address the jury, and the right of reply and practice and course of proceedings, save as hereby altered, shall be as at present.

Alternative
verdicts.
1992-17.

9. (1) Where, upon the trial of any indictment for any arrestable offence, except murder or manslaughter, the indictment alleges that the defendant did wound any person and the jury are satisfied that the defendant is guilty of the wounding charged in such indictment but are not satisfied that the defendant is guilty of the arrestable offence charged in such indictment, then and in every such case the jury may acquit the defendant of such arrestable offence and find him guilty of unlawfully wounding and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanour of unlawfully wounding.

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

(3) Where, on trial of any person charged with any offence, it appears to the jury upon the evidence that the defendant did not complete the offence charged but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the offence charged but is guilty of an attempt to commit the same, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular offence charged in the same indictment.

1992-17.

1992-17.

(4) No person tried as mentioned in subsection (3) shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

1992-17.

(5) and (6) *Repealed by 1992-17.*

9A. Where, in an indictment, any act is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done, then, if it appears to the jury before whom such person is tried that he did the act charged, but was insane when he did the act, the jury shall return a special verdict to the effect that the accused person is not guilty of the act charged against him, by reason of insanity.

Special verdict where accused person found guilty, but insane at date of act charged. 1998-25.

10. (1) No judgment after verdict upon any indictment for any offence shall be stayed or reversed for want of a *similiter* nor by reason that the jury process has been awarded to a wrong officer or upon an insufficient suggestion nor for any misnomer or misdescription of the officer returning such process or of any of the jurors nor because any person has served upon the jury who has not been duly returned to serve as a juror.

Staying of judgment. 1992-17.

(2) Where the offence charged has been created by any statute or subjected to a greater degree of punishment, the indictment shall after verdict be held sufficient to warrant the punishment prescribed by the statute, if it describe the offence in the words of the statute.

PART III

Punishments

Powers of
punishment.
1992-17.

11. (1) No person shall suffer death on conviction for any offence except where statute makes the offence punishable by death.

(2) Every person convicted of any offence not punishable by death shall be punished in the manner prescribed by the statute specially relating to such offence or by such fine or such other manner as the High Court may determine in addition to or in substitution for the punishment prescribed by the statute.

(3) Every person convicted of an offence for which no punishment is specially provided by the statute relating to that offence shall be deemed to be punishable under this Act by imprisonment for 2 years or by such fine or in such other manner as the High Court may determine in addition to or substitution for such imprisonment.

1992-17.

(4) Wherever sentence is passed for any offence on a person already imprisoned under sentence for another crime, it shall be lawful for the High Court to award imprisonment for the subsequent offence to commence at the expiration of the imprisonment to which such person was previously sentenced, and where such person is already under sentence of imprisonment the High Court, if empowered to pass sentence of imprisonment, may award such sentence for the subsequent offence to commence at the expiration of the imprisonment to which such person was previously sentenced, although the aggregate term of imprisonment may exceed the term for which imprisonment could be otherwise awarded.

12. *Repealed by 1992-17.*

Power of
court to
release first
offender
condition-
ally.
1992-17.

13. (1) In any case in which a person is convicted of any offence punishable with not more than 2 years' imprisonment before any court and no previous conviction is proved against him, if it appears to the court before whom he is so convicted, that, regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released

on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognisance, with or without sureties, and during such period as the court may direct, to appear and receive judgment when called upon and in the meantime to keep the peace and be of good behaviour.

(2) Where a court having power to deal with the offender in respect of his original offence or any court of summary jurisdiction is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.

(3) An offender when apprehended on any such warrant shall, if not brought forthwith before the court having power to sentence him, be brought before a court of summary jurisdiction and that court may either remand him by warrant until the time at which he was required by his recognisance to appear for judgment or until the sitting of a court having power to deal with his original offence, or may release him on bail, with a sufficient surety, conditioned on his appearing for judgment. 1996-28.

(4) The warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment or to answer as to his conduct since his release.

(5) The court, before directing the release of an offender under this section, shall be satisfied that the offender or his surety has a fixed place of abode or a regular occupation.

(6) For the purposes of this section the expression "court" includes a court of summary jurisdiction.

14. *Repealed by 1992-17.*

ss.16-18

Offences committed within Vice-Admiralty jurisdiction punished as if committed on land.

15. All offences which, if committed before the 15th August, 1958¹ would have been within the jurisdiction of any Court of Vice-Admiralty Sessions lawfully held within Barbados and which are duly prosecuted in the High Court, shall upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land.

Effect of a free or conditional pardon. 1992-17.

16. (1) Where either a free or conditional pardon is lawfully granted to any offender convicted of any offence punishable with death or otherwise, the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the same effect within Barbados as a pardon under the Great Seal of England has in England for such offender as to the offence for which such pardon is so granted.

1992-17.

(2) No free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any offence committed after the granting of any such pardon.

PART IV

Aiders and Abettors

Abettors in indictable and summary offences. 1992-17.

17. (1) Any person who aids, abets, counsels or procures the commission of any arrestable offence or misdemeanour, whether the misdemeanour is one at common law or by virtue of any Act, may be indicted, tried and punished as a principal offender.

(2) Every person who at different times handles stolen property may be charged in the same indictment and may be tried together, notwithstanding that the principal offender is not included in the same indictment or is not in custody or amenable to justice.

¹ Date of commencement of the Supreme Court of Judicature Act, Cap. 117, which vested this jurisdiction in the Supreme Court.

18. Where any person, within the jurisdiction which before 30th November, 1966 would have been the jurisdiction of England, aids, abets, counsels, or procures the commission of any arrestable offence cognisable in the courts of Barbados, whether the same is an offence at common law or by virtue of any Act and whether such offence was committed within that jurisdiction or elsewhere, or was begun within that jurisdiction and completed elsewhere, or was begun elsewhere and completed within that jurisdiction, the venue in the margin of an indictment for any such offence shall be the same if the offence had been committed in Barbados and the offence shall be averred to have been committed on the high seas.

Abettors in Admiralty offences. 1992-17.

19. – 22. *Repealed by 1992-17.*

PART V

General

23. (1) Where it becomes necessary at any time for any purpose whatsoever to draw up a formal record in any case where any amendment to an indictment has been made, such record shall be drawn up in

Records and certificates.

the form in which the indictment, after such amendment, was made, without taking any notice of the fact of such amendment having been made.

(2) A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where such indictment was tried or by the deputy of such clerk or other officer, shall, upon the trial of any indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment for the offence, without proof of the signature or official character of the person appearing to have signed the same. 1992-17.

24. Where any application is made to a Judge for the release of a prisoner on bail, such application may be entertained and disposed of, and any order the Judge may deem proper to make upon the same may be given, either in open court or in chambers and either during the sittings of the High Court or at any other time. Judge may release on bail.

25. (1) Where upon the trial of any person charged with any indictable offence, it is proved on oath by any credible witness that any person whose deposition was taken before any magistrate is so ill as not to be able to travel or is dead, insane or no longer in Barbados, and where it also be proved that such deposition was taken in the presence of the person so accused and that he or his attorney-at-law had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the magistrate, by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence on the trial without further proof thereof, unless it is proved that such deposition was not in fact signed by the magistrate purporting to sign the same. Depositions of persons seriously ill, dead, insane or absent from Barbados may be read as evidence. 1956-50.

(2)¹ A certificate of a magistrate authenticating one or more depositions or statements tendered under section 25B of the *Magistrates Jurisdiction and Procedure Act* shall be sufficient to satisfy the requirement under subsection (1) as to the signing of the deposition or statement by the magistrate. 1984-26. Cap. 116.

¹Subsection (2) and (3) inserted by Act, 1984-26 has not been proclaimed.

1984-26.
Cap. 116.

(3)¹ This section applies with the necessary modifications and exclusions to a written statement tendered in evidence under section 25B of the *Magistrates Jurisdiction and Procedure Act* as it applies to a deposition taken by a magistrate under that Act.

Judge may
issue
warrant for
examination
of prisoner.
L.N. 168/
1967.

26. (1) It shall be lawful for a Judge, in any case where he may see fit to do so upon application by affidavit, to issue a warrant or order under his hand for bringing up any prisoner or person confined in any gaol, prison or place, under any sentence or under commitment for trial or otherwise, before any court, Judge, magistrate or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending or to be enquired of or determined in or before such court, Judge, magistrate or other judicature.

(2) The person required by any such warrant or order to be so brought before such court, Judge, magistrate or other judicature shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner, required by any writ of *habeas corpus* awarded by a Judge to be brought before the High Court to be examined as a witness in any cause or matter depending before the High Court, is now by law required to be dealt with.

Court may
order person
already in
custody to
be produced
where bill of
indictment is
signed.

27. Where a bill of indictment is signed against any person, and such person is already in prison under any warrant of commitment or under sentence for some offence other than that for which the bill of indictment is signed, it shall be lawful for the High Court before which such bill of indictment is returned by an order in writing to direct the keeper of the prison in which such person may be confined to bring up the body of such person, in order that he may be arraigned upon the indictment without any writ of *habeas corpus*, and the keeper shall thereupon obey such order.

No fee
required on
discharge.

28. No person indicted or tried in the High Court shall be required to pay any fee upon his discharge from court or from prison, should he be imprisoned by order of the High Court.

¹Subsection (2) and (3) inserted by Act, 1984-26 has not been proclaimed.