



Tonga

MAGISTRATES' COURTS ACT

1988 Revised Edition



MAGISTRATES' COURTS ACT

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MAGISTRATES' COURTS ACT

Acts Nos. 2 of 1918, 4 of 1919, 2 of 1930, 7 of 1931, 6 of 1936, 19 of 1942, 21 of 1942, 8 of 1946, 15 of 1949, 7 of 1950, 9 of 1958, 5 of 1963, 6 of 1963, 20 of 1966, 7 of 1969, 14 of 1969, 9 of 1974, 13 of 1975, 26 of 1977, 20 of 1978, 29 of 1978, 19 of 1985, 29 of 1988 and 46 of 1988.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO MAGISTRATES

Commencement [24th November, 1919]

1 Short title.

This Act may be cited as The Magistrates' Courts Act.

PART I - APPOINTMENT AND JURISDICTION OF MAGISTRATES

2 Chief Police Magistrate.

- (1) The Prime Minister with the consent of Cabinet may appoint a Chief Police Magistrate. (*Added by Act 21 of 1942 and Amended by Act 29 of 1988.*)
- (2) Whenever the Chief Police Magistrate is unable by reason of illness, absence, interest or other cause to act as Chief Police Magistrate it shall be

lawful for the Prime Minister with the consent of Cabinet to appoint some other fit and proper person to act as Chief Police Magistrate. (*Amended by Act 29 of 1988.*)

- (3) The Chief Police Magistrate may preside over any Magistrate's Court in the Kingdom. (*Amended by Act 29 of 1988.*)
- (4) The Chief Police Magistrate and any person acting as such shall have and may exercise all the jurisdiction conferred by this Act upon a magistrate in any magisterial district and shall be entitled to all protection given to magistrates by this Act. (*Added by Act 6 of 1936.*)

3 Appointment of magistrates.

- (1) It shall be lawful for the Prime Minister with the consent of the Cabinet to appoint a magistrate for each of the following districts and with the like consent to transfer any magistrate from one district to another —
 - (a) Tongatapu and 'Eua;
 - (b) The Ha'apai group including Nomuka;
 - (c) the Vava'u group;
 - (d) Niuafu'ou;
 - (e) Niuatoputapu.
- (2) Each magistrate so appointed as aforesaid shall preside over the Magistrates' Courts in the district to which he is assigned.

4 Vacancies.

As often as any vacancy occurs in the number of magistrates from any cause whatsoever it shall be lawful for the Prime Minister with the consent of the Cabinet to appoint some person to fill the vacancy.

5 Acting appointments.

It shall be lawful for the Cabinet in case of necessity to direct any magistrate or any other competent person to act for or assist another magistrate in the discharge of his duties and every magistrate or person aforesaid acting for or assisting another magistrate shall have the same powers and be entitled to the same protections as the magistrate for whom he is acting or whom he is assisting.

6 **Sittings of the Courts.**

- (1) Sittings of the Magistrates' Courts shall be held in the Magistrates' Courts at Nuku'alofa (Tongatapu) Lifuka (Ha'apai) Neiafu (Vava'u) Angaha (Niufo'ou) and Hihifo (Niuatoputapu) as follows —
 - (a) for criminal cases every Tuesday at 10 a.m.
 - (b) for civil cases on the first Thursday of every month at 10 a.m.
- (2) Sittings of the Magistrates' Courts at 'Eua and in the out-islands of the Ha'apai group shall be held at such times and at such places as may be appointed by rules made under this Act.
- (3) It shall be lawful by such rules to provide if necessary for additional sittings of the Magistrates' Courts or any of them or to vary the time or place at which any such Court shall be held.

7 **Adjournment of Courts.**

The Sittings of any Magistrates' Courts shall be adjourned from day to day excepting Sundays and public holidays until all the cases whether criminal or civil are disposed of.

8 **General powers and jurisdiction.**

Every magistrate shall have jurisdiction —

- (a) to cause to be brought before him by summons or by warrant as hereinafter provided all persons charged with criminal offences;
- (b) to issue search warrants as hereinafter provided;
- (c) to investigate all charges of criminal offences which he is not empowered to try and to discharge the accused or commit him for trial before the Supreme Court;
- (d) to try and discharge or convict and sentence all persons charged with committing offences which he is empowered by this or any other Act to hear and determine;
- (e) to admit to bail as hereinafter provided persons charged with committing offences;
- (f) to make orders of maintenance against husbands who have deserted or omitted to maintain their wives;
- (g) to issue subpoenas requiring the attendance of witnesses in criminal and civil cases;
- (h) to bind over prosecutors and witnesses to prosecute and give evidence;

- (i) to enforce by distress or imprisonment the payment of any fine imposed by a magistrate;
- (j) to take affidavits and administer oaths;
- (k) to hear and determine all civil proceedings as provided in Part V of this Act;
- (l) to exercise such other powers and do such other acts not hereinbefore specified as may be prescribed by any law now in force or hereafter passed or as and when specified by His Majesty in Council; (*Amended by Act 9 of 1974.*)
- (m) to make a temporary order upon the application of a party to a dispute, a District Officer, a Town Officer, or member of the Police Force where prompt action is needed either in the interest of justice or to preserve peace and order in the area:

Provided that if the Order is applied for in a cause or matter the trial of which would be outside his jurisdiction he shall immediately after making the order inform the Chief Justice or a Judge of the Supreme Court of the facts of the case and the terms of the order. Any party aggrieved by any order made by a Magistrate under this paragraph may appeal to the Supreme Court or the Land Court if the case is a Land Case. (*Inserted by Act 29 of 1978.*)

9 Process to have effect throughout Kingdom.

Every summons, warrant, order or other process issued by any magistrate in a matter within his jurisdiction may be served and executed in any part of the Kingdom and shall have the same effect in every other district as in the district of the magistrate who issued it.

10 Offences in territorial waters.

All offences committed in or within the limits of any bay or inlet of the sea within the Kingdom may be heard and determined or investigated as the case may be by the magistrate within whose district the bay or inlet may be and all offences committed on board any vessel or boat beyond such limits as aforesaid may be heard and determined by the magistrate on or near to the shore of whose district the vessel or boat after the commission of the offence may anchor or touch.

PART II - SUMMARY JURISDICTION IN CRIMINAL CASES

11 Limits of Summary jurisdiction.

Subject to section 35, every magistrate shall have jurisdiction to hear and determine all criminal cases in which the punishment provided by law does not exceed \$500 or 2 years imprisonment and also all criminal cases including proceedings for the recovery of fines penalties and forfeitures which the magistrate is by any law expressly empowered to hear and determine. (*Amended by Acts 13 of 1975 and 29 of 1978.*)

12 Accused may elect trial by jury in indictable cases.

Subject to section 35, in all indictable cases the magistrates shall before committing the accused for trial ask the accused whether he elects to be tried by the Supreme Court and a jury or by a Judge of the Supreme Court sitting without a jury and shall commit the accused accordingly. (*Substituted by Act 7 of 1950 and Amended by Act 12 of 1975.*)

13 Mode of application for summons.

Every person desiring to institute a prosecution in a Magistrate's Court for any offence which such Court has jurisdiction to try shall apply in person to the clerk for a summons and shall at the time of such application state clearly the nature of the offence complained of and the time and place at which it was committed.

14 Preparation and issue of summons.

Whenever upon any application to the clerk for a summons it appears that any person has committed or is reasonably suspected to have committed within the district of the magistrate any offence triable by such magistrate, the clerk shall make out a summons in Form I contained in the Schedule hereto. Such summons shall state concisely the offence with which the defendant is charged and the time and place at which it was committed and shall require the defendant to appear at a specified time before the Magistrate's Court to answer the charge in the summons and to be dealt with according to law:

Provided that if it appears at the hearing that the summons has not been served on the accused more than 24 hours before the time and date stated in the Summons (if the accused was served within the district) or more than 14 days (if he was served outside the district) the case shall not proceed without the express consent of the accused, which consent shall be recorded in the record of the proceedings. (*Substituted by Act 20 of 1978.*)

15 Summons to be for one offence only.

Every summons shall be for one offence only but a complainant may bring more than one charge against the same defendant at the same time by taking out a separate summons in respect of each such charge and the magistrate may where he considers it expedient deal with such summonses either together or separately.

16 Summons to be signed and sealed by magistrate.

Every summons before being issued for service shall be read by the magistrate who shall affix his signature and seal thereto.

17 Mode of service of summons.

- (1) Every summons shall be served upon the defendant by a constable or other officer of police either by delivering it to the defendant personally or if he cannot be found by leaving it or a copy of it for him with some adult inmate at his last place of abode.
- (2) The expression "adult" in the immediately preceding subsection means a person of the age of 16 years or upwards.

18 Proof of service of summons.

- (1) Where the constable or other officer of police by whom a summons is served is not present at the hearing of the case, and in any case where a summons issued by a Court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate that such summons has been served shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.
- (2) Such affidavit shall be in Form 3 in the Schedule hereto and shall be transmitted forthwith by the police officer in charge of the district in which service is effected to the magistrate by whom the summons was issued and shall be accepted by him as sworn proof of the manner in which the summons was served. (*Substituted by Act 15 of 1949.*)

19 Clerk to prepare list.

The clerk shall prepare a list of all criminal cases to be tried upon each court day. Such list shall state the name of each accused person, the offence with which he is charged and the name of the prosecutor and the cases shall be called for hearing consecutively from the list.

20 Mode of conducting case.

Both the complainant and the defendant shall be entitled to conduct their cases in person or by a licensed lawyer.

21 Procedure on non-appearance of defendant.

- (1) If on the date for the hearing specified in the summons the defendant does not appear before the Court when his name is called the magistrate may either —
 - (a) adjourn the hearing of the case to a later date; or
 - (b) after proof of service of the summons, hear and determine the case in the absence of the defendant; or
 - (c) after proof of service of the summons, issue a warrant for the arrest of the defendant and adjourn the hearing.
- (2) When the defendant is arrested under any such warrant as aforesaid he shall be brought forthwith before a magistrate who may either admit him to bail or order him to be remanded in custody until the next sitting of the Court.
- (3) At such next sitting the magistrate shall proceed with the hearing of the offence charged in the summons provided that if it is not possible to complete the hearing of the case at any sitting it shall be lawful for the magistrate to adjourn the hearing to the subsequent sitting and to admit the defendant to bail or order him to be remanded in custody until such sitting. (*Substituted by Act 7 of 1931.*)

22 Procedure on non-appearance of complainant.

If when the case is called the defendant appears or is brought before the Court under a warrant of arrest and the complainant having had due notice of the time and place of hearing (which shall be proved to the satisfaction of the magistrate) does not appear the magistrate may dismiss the complaint or if he thinks fit adjourn the hearing to some future day.

23 Non-appearance of both parties.

If when the case is called neither the complainant nor the defendant appears the magistrate may dismiss or adjourn the case as he thinks fit.

24 Hearing of case where both parties appear.

- (1) If when the case is called both the complainant and the defendant appear the magistrate shall proceed to hear and determine the complaint.
- (2) At the outset of the hearing the magistrate shall state to the defendant the offence charged in the summons and shall ask him whether he is guilty or not guilty.
- (3) If the defendant says that he is guilty the magistrate shall make such order against him as the justice of the case requires.
- (4) if the defendant says that he is not guilty the magistrate shall order the witnesses on both sides to remain out of the hearing of the Court until called on to give their evidence.
- (5) The magistrate shall then proceed to hear the evidence of the complainant and his witness and to hear the evidence of the defendant and his witnesses and also such evidence on behalf of the complainant as may be tendered in reply to the evidence given by the defendant and his witnesses.
- (6) The evidence of every witness shall be given on oath or affirmation as prescribed by section 71 hereof but a defendant may at his option make an unsworn statement instead of giving evidence and shall not be compellable either to give evidence or to make any statement for or against himself (*Amended by Act 9 of 1958.*)
- (7) The defendant or his lawyer shall be entitled to cross-examine the complainant and each of the complainant's witnesses upon all facts relevant to the charge and the complainant or his lawyer shall have a similar right in respect of the defendant and each of the defendant's witnesses.
- (8) The complainant or his lawyer shall be entitled to address the Court at the commencement of his case. The defendant or his lawyer shall be entitled to address the Court either at the commencement or the conclusion of his case as he may think fit. If any evidence has been given by or on behalf of the defendant the magistrate may allow the complainant or his lawyer to address the Court a second time at the conclusion of the case.
- (9) At the conclusion of the case the magistrate shall either at the same or at an adjourned sitting of the Court give his decision by either dismissing the complaint or convicting the defendant and making such order against him as the justice of the case requires.
- (10) The clerk shall in every case take and keep a record in shorthand of the complaint, the evidence and the order made by the magistrate.

25 Offences triable in Supreme Court.

If upon the hearing it appears to the magistrate that the case is one which is by law triable only before the Supreme Court or if the Attorney-General intimates to the magistrate his opinion in writing to that effect, the magistrate shall not proceed to decide the case but the evidence shall be taken and the case dealt with in all respects as if the charge had been for an offence triable only in the Supreme Court. (*Amended by Act 46 of 1988.*)

26 Cross complaints.

Where cross complaints are made by the same parties with reference to the same matter the magistrate may if he thinks fit hear and determine the complaints at one and the same time.

27 Enforcement of orders for payment.

Where any sum of money adjudged to be paid by an order remains unpaid for 14 days exclusive of Sundays from the date of such order then unless the enactment on which such order is founded expressly provides imprisonment in default of payment the magistrate may as provided by sections 53 and 54 hereof issue a warrant of distress for the levying of such sum.

28 Scale of imprisonment for non-payment of fine.

Subject in any case to the provisions of the enactment under which the defendant is convicted, the period of imprisonment imposed by a magistrate in respect of the non-payment of any sum of money adjudged by a conviction to be paid or in respect of the default of sufficient distress to satisfy any such sum shall be such period as in the opinion of the magistrate the justice of the case requires but shall not in any case exceed the maximum fixed by the following scale —

Where the amount adjudged to be paid	The said period shall not exceed
Up to \$20	7 days.
Between \$21 and \$50	14 days
Between \$51 and \$100	3 months
Between \$101 and \$200	6 months.
Between \$201 and \$300	12 months.
Over \$300 (<i>Amended by Act 46 of 1988.</i>)	2 years.

29 Liability of guardian for costs.

The parent or guardian of any child whose age is proved or appears to a magistrate to be of or above the age of 7 years and under the age of 15 years who is convicted of an offence may be ordered by the Court to pay costs or costs and compensation to the complainant and if such costs or costs and compensation are not paid by the parent or guardian within 14 days from the date of such order a warrant of distress may be issued against him:

Provided that no guardian shall be ordered to make any such payment unless he shall first have had an opportunity of being heard and of adducing evidence in his defence.

30 Punishment of child by whipping.

- (1) Where any male person whose age is proved or appears to a magistrate to be of or above the age of 7 years and under the age of 15 years is tried and convicted by a magistrate for any offence the magistrate may in his discretion instead of any other punishment which he is empowered to inflict, order such male person to be whipped by a constable or sergeant of police and in the presence if he desires to be present of the parent or guardian of such male person.
- (2) The sentence of whipping may be to be whipped once or twice. Such whipping shall be with a light rod or cane composed of several tamarind or other twigs and the sentence shall specify the number of strokes which shall not exceed 10 strokes at any one whipping.

31 Adjournment and proceedings thereon.

- (1) At any time before or during the hearing of a criminal charge the magistrate may for reasonable cause adjourn the hearing to a future time and place then stated in the presence and hearing of the parties or their lawyers.
- (2) Upon any such adjournment the magistrate may:
 - (a) suffer the defendant to go at large; or
 - (b) admit the defendant to bail conditions for his appearance at the time and place to which the hearing is adjourned; or
 - (c) commit him by warrant to prison:

Provided that no such committal shall be for a longer term than 8 days; the day following that on which the committal is made being counted as the first day.

- (3) If at the time and place to which the hearing is adjourned the defendant does not appear, the magistrate may issue a warrant for his arrest and adjourn the hearing until the first sitting of the Court after his arrest.
- (4) If at the time and place to which the hearing is adjourned the complainant does not appear, the magistrate may further adjourn the hearing or dismiss the complaint.

PART III - PRELIMINARY INQUIRY BEFORE A MAGISTRATE

32 Limits of jurisdiction.

Every magistrate may issue a summons or (where it is proved on oath to his satisfaction that the defendant is likely to abscond) a warrant to compel the appearance of an accused person before him for the purposes of preliminary inquiry in either of the following cases —

- (a) Where a person is accused of having committed within the district of such magistrate an offence triable before the Supreme Court or the Chief Police Magistrate as the case may be; or
- (b) where a person accused of having committed outside the jurisdiction of such magistrate any offence triable before the Supreme Court or the Chief Police Magistrate as the case may be is to be found or likely to be found within the district of such magistrate. (*Amended by Act 19 of 1942.*)

33 Preparation issue and service of summons.

The form of the summons to the accused, its contents preparation and issue, the time specified for appearance, and also the service and proof of service thereof shall be similar in every respect to those prescribed by sections 14 to 18 inclusive of this Act in the case of summonses for criminal offences which a magistrate is empowered to hear and determine.

34 Proceedings at preliminary inquiry.

- (1) The magistrate shall state to the accused the offence with which he is charged and shall explain to him that he is not required to plead or answer to the charge in the Magistrate's Court inasmuch as the offence is triable only before the Supreme Court or the Chief Police Magistrate as the case may be. (*Amended by Act 19 of 1942.*)

- (2) The magistrate shall order all witnesses in the case to remain out of hearing of the Court until called upon to give their evidence and shall then proceed to hear the evidence of the witnesses produced by the prosecution in support of the charge.
- (3) The evidence of every witness for the prosecution shall be given upon oath or affirmation as prescribed by section 7 of this Act in the presence of the accused and he or his lawyer shall be entitled to cross-examine each witness upon all facts relevant to the charge.
- (4) When the examination of all witnesses for the prosecution is completed the magistrate shall say to the accused the following words: "Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to do so unless you so desire but whatever you say will be taken down by the clerk and may be given in evidence against you upon your trial." Whatever the accused then says in answer thereto shall be taken down and read over to him. Any such statement in answer made by the accused may be upon oath or not at his option.
- (5) The magistrate shall then ask the accused if he wishes to call any witnesses and the evidence of any witness called by him shall be taken in the same manner as that of the witnesses for the prosecution and the inspector of police or other person prosecuting shall be entitled to cross-examine each such witness upon all facts relevant to the charge.
- (6) When the accused has been heard and his witnesses (if any) have given their evidence the magistrate, if upon the whole of the evidence he is of opinion that no sufficient case has been made out to put the accused upon his trial before the Supreme Court or the Chief Police Magistrate, as the case may be, shall discharge him.

35 Election of summary trial.

- (1) If at any time during the preliminary enquiry into the offence it appears to the Magistrate, having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature and circumstances of the case, that the punishment that the Magistrate has power to inflict under his Act would be adequate, the Magistrate may, subject to the provisions of Sub-sections (2) and (3) hereof, proceed to deal with the case summarily in the manner provided by section 24.
- (2) For the purpose of proceeding as aforesaid, the Magistrate shall tell the accused that he may, if he consents be tried summarily instead of being tried by a Judge of the Supreme Court or by a jury if he were so to elect and, if the Magistrate thinks it desirable for his information shall explain to him what is meant by being tried summarily. (*Corrected by Law Revision Commissioner.*)

- (3) Where on the summary trial as herein provided the accused is convicted of the offence, then, if on obtaining information about his character and antecedents the Magistrate is of opinion that they are such that greater punishment should be inflicted for the offence than the Magistrate has power to inflict, the Magistrate may commit him in custody to the Supreme Court for sentence. (*Inserted by Act 13 of 1975.*)

36 Remission to Magistrate.

- (1) It shall be lawful for a judge of the Supreme Court on application in Chambers by the prosecutor and the accused or either of them to remit for trial in the Magistrate's Court any case committed to the Supreme Court for trial, provided always that he shall not make such an order without the consent of all parties. (*Amended by Act 19 of 1985.*)
- (2) Upon any case being so remitted under sub-section (1) hereof, the Magistrate shall proceed to deal with such case summarily in the manner provided in section 24.
- (3) The power conferred by section 35 (3) may be exercised by the Magistrate when dealing with any case on summary trial under this section. (*Inserted by Act 26 of 1977.*)

37 Procedure where accused person is discharged.

In every case in which a magistrate shall discharge a person accused before him of any offence triable only before the Supreme Court or the Chief Police Magistrate, as the case may be, he shall forthwith transmit to the Attorney-General a transcript of the record comprising the charge and all the evidence taken in the case and, if the Attorney-General on reading and considering the evidence is of opinion that the accused should not have been discharged, it shall be lawful for him to apply to the Chief Justice for a warrant for the arrest and committal for trial of the accused person and, if the Chief Justice shall be of opinion that the evidence given before the magistrate was sufficient to place the accused person upon his trial, it shall be lawful for him to issue a warrant for the arrest of the accused person and for his being kept in custody until discharged in course of law; and every person so proceeded against shall be further prosecuted in like manner as if the magistrate instead of discharging him had committed him for trial. (*Amended by Act 19 of 1942 and Act 46 of 1988.*)

38 Committal of accused for trial.

If upon the whole of the evidence the magistrate thinks a sufficient case has been made out to put the accused on his trial he shall commit him for trial to the next

ensuing session of the Supreme Court or the Chief Police Magistrate, as the case may be:

Provided always that, if the Court be then sitting, the magistrate may commit him for trial forthwith. (*Amended by Act 19 of 1942.*)

39 Binding over witnesses.

- (1) When any person is committed for trial the magistrate holding the preliminary inquiry shall bind over every witness who has given evidence for the prosecution or the defence, to give evidence at the trial of the accused before the Supreme Court or the Chief Police Magistrate, as the case may be. (*Amended by Act 19 of 1942.*)
- (2) The recognizance to be entered into by witnesses shall be in Form 14 in the Schedule hereto and shall be signed by each witness in the presence of the magistrate who shall affix his signature and seal thereto.
- (3) Any witness who without reasonable excuse refuses to be bound over to give evidence at the trial of the accused before the Supreme Court or the Chief Police Magistrate, as the case may be, may be committed by the magistrate by a warrant to the prison, there to be kept until the trial, or until the witness consents to be bound over as aforesaid by the magistrate. (*Amended by Act 19 of 1942.*)

40 Conditional orders for attendance of witnesses.

- (1) Where it appears to the Court, after taking into account any representation made by the accused or the prosecutor, that the attendance at the trial of any witness is unnecessary because his evidence is unlikely to be required or disputed, the Court shall make a conditional order requiring him to attend the trial only if notice to that effect is given to him; and if a witness order other than a conditional order has previously been made by the Court in his case, the Court shall direct such order to be treated as a conditional order.
- (2) The conditional order shall be in Form 15 set out in the Schedule hereto. (*Inserted by Act 29 of 1978.*)

41 Documents to be forwarded to Supreme Court.

The magistrate shall, as soon as possible after the accused has been committed for trial to the Supreme Court or the Chief Police Magistrate, as the case may be, cause to be transcribed and forwarded to the Registrar of the Supreme Court or the Chief Police Magistrate, as the case may be, 2 copies of the record of the preliminary inquiry comprising the charge, the evidence of the witnesses, and

the statement of the accused, and shall transmit therewith all documentary exhibits and all recognizances entered into. The Registrar of the Supreme Court or the Chief Police Magistrate, as the case may be, on receipt thereof shall forward one copy of the record to the Attorney-General. (*Amended by Act 19 of 1942 and Act 46 of 1988.*)

42 Committal without calling witnesses.

- (1) It shall be lawful for the magistrate on the application of the prosecutor and with the consent of the accused to commit the accused for trial to the Supreme Court without the calling of witnesses.
- (2) Where the prosecutor wishes to apply for committal proceedings under this section he shall —
 - (a) give written notice to that effect to the magistrate and the accused in Form 19 and Form 20 in the Schedule hereto;
 - (b) lodge with the magistrate 2 sets of documents each consisting of one copy of a fair summary of the statements of the prosecution witnesses, one copy of the list of exhibits he proposes to produce and one copy of any documentary exhibits he proposed to produce.
- (3) Upon the accused appearing in answer to the Summons, the magistrate shall —
 - (a) state to the accused the offence with which he is charged and shall explain to him that he is not required to plead or answer at that stage as the case will be tried in the Supreme Court if he is committed for trial;
 - (b) state to the accused that if he consents he will be committed to the Supreme Court for trial without the calling of witnesses and that if he is so committed he will be served with a summary of the statements of the prosecution witnesses;
 - (c) state to the accused that if he does not so consent the prosecutor will call his witness;
 - (d) record the decision of the accused.
- (4) Upon the accused not consenting to committal without the calling of witnesses, the magistrate shall continue with the procedure as set out in section 34(2) to section 41 inclusive.
- (5) Upon the accused consenting to committal without the calling of witnesses the magistrate shall —
 - (a) cause to be handed to the accused in open court, the accused's set of documents consisting of one summary of the statements of the prosecution witnesses, one copy of the list of exhibits, and one copy of the documentary exhibits;

- (b) endorse on the remaining copy that the accused has received his set of documents;
- (c) commit the accused to the Supreme Court for trial in custody or on bail as appropriate;
- (d) forward the remaining set of documents together with a record of the proceedings in Form 21 in the Schedule hereto to the Registrar of the Supreme Court. (*Inserted by Act 20 of 1978.*)

43 Exhibits.

- (1) All exhibits shall for the purpose of identification be labelled at the preliminary inquiry with the name of the case and shall be numbered consecutively in the order of their production to the Court.
- (2) Exhibits other than documents shall be taken charge of by the police and shall be produced by them at the trial before the Supreme Court or the Chief Police Magistrate, as the case may be. (*Amended by Act 19 of 1942.*)
- (3) The accused shall be entitled to examine such exhibits as may be produced by the prosecutor at all reasonable times between the preliminary inquiry and the trial. (*Inserted by Act 20 of 1978.*)

44 Evidence of sick or absent witness.

- (1) Whenever it appears to a magistrate that any person able to give material evidence either for or against the accused is so dangerously ill as to be unable to attend Court or is about to leave the Kingdom for a period extending beyond the time when the accused would be tried, the magistrate may take the evidence of such person at the place where such person is lying ill or if such person is about to leave the Kingdom in open Court. The magistrate shall give to the prosecutor and the accused such reasonable notice in writing as the case admits of his intention to take such evidence. Such notice shall be in Form 16 in the Schedule hereto and shall specify the time and place where such evidence will be taken and shall state that the prosecutor and the accused will be at liberty to attend and cross-examine the person whose evidence is to be taken. (*Amended by Act 29 of 1978.*)
- (2) If the accused is in custody, the magistrate may by order in writing direct the person having the custody of the accused to convey him to the place and at the time notified and the person in whose custody the accused is shall convey him accordingly.

45 Clerk to take and forward record of evidence.

The record by the clerk of any evidence taken pursuant to section 44 shall state the date and place where such evidence was taken, the reason for so taking it and the names of the persons present when it was taken, and in indictable cases to be dealt with in the Supreme Court 2 transcribed copies of such evidence shall be included in the copies of the record of the preliminary inquiry forwarded to the Registrar of the Supreme Court or the Chief Police Magistrate, as the case may be, and may be produced and read as evidence on the trial of the accused unless it is proved that the person whose evidence has been so taken has returned to the Kingdom or is so recovered from his illness as to be able to be present at the sessions. (*Amended by Acts 19 of 1942 and 29 of 1978.*)

46 Right of accused person to bail

- (1) Where the offence with which the accused is charged is punishable with a fine or imprisonment not exceeding 3 years he shall be entitled to be admitted to bail.
- (2) Where the offence with which the accused is charged is punishable with imprisonment exceeding 3 years bail may be allowed or refused at the discretion of the magistrate:

Provided that a magistrate shall not admit to bail any person charged with treason or murder.

47 Bail on adjournment.

- (1) Whenever the preliminary inquiry is for any reason I adjourned the magistrate holding it shall, or may, in accordance with the provisions of section 46, admit the accused to bail on condition of his appearing at the time to which the inquiry is adjourned.
- (2) If such person fails to appear according to the condition of the recognizance at the time to which the inquiry is adjourned the magistrate before whom he ought to have appeared may issue a warrant for his arrest.

48 Committal of accused.

- (1) When the magistrate has committed the accused person for trial he shall, unless he admits such person to bail as hereinafter provided, commit him to prison to await his trial before the Supreme Court or the Chief Police Magistrate, as the case may be. (*Amended by Act 19 of 1942.*)
- (2) The police officer to whom the warrant of commitment is directed shall convey the accused person therein-named to the prison and there deliver him together with the warrant to the keeper of the prison.

49 Committal.

- (1) If an accused person who is committed for trial is admitted to bail, the recognizance of bail shall be in Form 13 in the Schedule hereto and shall be taken from the accused and either one or more surety or sureties in the discretion of the magistrate and shall be signed by the accused and his surety or sureties in the presence of the magistrate who shall affix his signature and seal thereto.
- (2) The condition of the recognizance of bail shall be that the accused person shall personally appear before the Supreme Court at its next sitting to answer to any information that may be filed against him in the said Court in respect of the offence wherewith he is charged.

Amount of bail.

- (3) The amount of bail to be taken shall be in the discretion of the magistrate but no accused person shall be required to give excessive bail.

50 Proof of sufficiency of means.

A magistrate may in his discretion require to be satisfied by evidence on oath of the sufficiency of the means of any person proposing to enter into a recognizance of bail whether as a surety or otherwise.

PART IV - SEARCH WARRANTS, WARRANTS OF ARREST AND DISTRESS WARRANTS

51 Search warrants.

- (1) Where a magistrate is satisfied by affidavit sworn before him that there is reasonable ground for believing that any property upon or in respect of which any offence has been committed is in any house or premises he may issue a warrant in Form 6 in the Schedule hereto authorizing any police officer named therein to enter and search such house or premises and if such property or any part thereof or any stolen property whether or not shown on this warrant be found in such house or premises to bring the same and the person or persons in whose possession such house or premises may be or any person therein who is reasonably suspected of being aware of such property being therein before the magistrate issuing the warrant. (*Amended by Act 8 of 1946.*)
- (2) A search warrant may be issued and executed on any day of the week and shall be executed between the hours of 5 a.m. and 8 p.m. unless the magistrate shall by the warrant otherwise direct.

- (3) Every magistrate shall preserve carefully till the conclusion of the case any article seized and brought before him under a search warrant and if any appeal is made or any person committed for trial shall order it to be detained for the purpose of the appeal or of evidence on the trial. If no person is committed for trial or if no person is convicted and no appeal made, the magistrate shall order the article to be restored to the person from whom it was taken by virtue of the search warrant:

Provided that no such order of restoration shall be made if the possession of such article is an offence according to any law for the time being in force.

52 Warrants of arrest.

- (1) Whenever it is made to appear on oath before a magistrate that a person accused of any criminal offence is likely to abscond, the magistrate shall issue a warrant for the arrest of such person and such warrant may be issued notwithstanding that a summons in respect of the same charge has been already issued and the time for appearance therein mentioned has not yet expired. A magistrate may also issue his warrant of arrest in any other case where so empowered by this or any other enactment.
- (2) Every warrant of arrest shall be in Form 4 in the Schedule hereto and may be issued at any time on any day and shall be dated, signed and sealed by the magistrate issuing it.
- (3) Every such warrant shall be directed to each and all of the constables of the Kingdom and shall state shortly the act complained of and shall name or otherwise describe the person to be arrested and shall order such person to be apprehended and brought before the magistrate issuing it.

53 Distress warrants.

Every warrant of distress shall be in Form 11 in the Schedule hereto and shall be signed and sealed by the magistrate issuing it.

The warrant of distress when signed and sealed by the magistrate shall be delivered by the clerk to a police officer for execution.

54 Mode of executing distress warrants.

Distress warrants shall be executed as follows —

- (a) the magistrate shall give to the District Officer of each village at least one week's notice in writing of the date on which the police officer will attend at such village to execute warrants of distress against the inhabitants. As soon as possible after the receipt of such

notice from the magistrate the District Officer shall cause the town officer or town clerk to proclaim by fanongonongo the date on which the police officer will attend:

Provided that no such notice as aforesaid shall be necessary in the case of warrants of distress issued for execution in any of the out-islands of the Tongatapu, Ha'apai or Vava'u groups with the exception of 'Eua;

- (b) a police officer charged with the execution of any distress warrant shall visit the village on the date specified in the aforesaid notice and shall seize such goods of any person against whom a warrant of distress has been issued as may be lawfully seized and shall make an inventory thereof. Unless the person upon whose goods the distress is levied consents to their being auctioned where they stand the police officer shall remove all goods seized under a distress warrant to the public square of the village and there sell them by public auction after giving notice by fanongonongo of such sale. He shall deliver to each person whose goods are sold a certificate of the amount realised by the sale;
- (c) any surplus realised by the sale over and above the amount to be levied shall be paid by the police officer to the person against whom the distress warrant was issued and such person shall give a receipt for the same to the police officer. Where any person against whom a warrant of distress has been issued pays or tenders to the police officer executing it the sum or sums mentioned therein together with the costs of the warrant or produces to him the receipt of the Court for the sum due at the date of such receipt the officer shall cease to execute the warrant;
- (d) a warrant of distress shall not be executed after sunset nor on a Sunday;
- (e) houses, fixtures, growing crops, the clothing of a person and his family, and, to the value of \$200, the tools and implements of his trade shall not be taken under a warrant of distress; (Amended by Act 46 of 1988.)

Explanation

All kinds of house furniture such as beds tables chairs and kitchen utensils may be seized and sold. So too may boxes carts animals fowls and every kind of agricultural produce provided it has been garnered and is no longer a growing crop. Thus coconuts or yams which have been already gathered may be seized but not coconuts on the tree or yams in the ground.

- (f) execution shall not be levied more than once under the same warrant.

55 Return of warrant.

All goods sold by auction under a distress warrant shall be paid for before delivery and an inventory of the goods and the prices received for each shall be entered on the back of the warrant by the police officer executing it and the warrant shall thereupon be returned by him to the magistrate together with the amount realised by the sale.

56 Penalty for evading distress.

Whoever shall conceal any goods or chattels of any person against whom a warrant of distress has been issued, or whoever shall make a pretended sale or gift of his goods or chattels or any part thereof in order to evade the levy of a distress thereon, or whoever shall make to the police officer a false declaration of the amount of his goods, or shall conceal from such officer any of his property, shall on conviction thereof before a magistrate be liable to a fine not exceeding \$20 and, in default of payment, to imprisonment for any term not exceeding 3 months.

57 Endorsement of warrant.

If the goods of any defendant when seized and sold under a warrant of distress prove insufficient to satisfy the amount to be levied, or if no goods can be found whereon to levy, the police officer charged with the execution of the warrant shall forthwith endorse the warrant with the words "Insufficient goods found" or "No goods found", as the case may be, together with his signature and the date, and shall return the warrant so endorsed to the magistrate by whom it was issued.

58 Imprisonment in default of distress.

Where in any criminal case a warrant of distress is returned to the magistrate by the police officer charged with its execution endorsed "insufficient goods found" or "No goods found", the magistrate shall issue a warrant of commitment in Form 12 in the Schedule hereto. Such warrant shall order the defendant to be imprisoned in respect of the sum still remaining unsatisfied by the distress for any term not exceeding the term specified in respect of a like sum in the scale of imprisonment prescribed by section 28 of this Act. (*Amended by Act 9 of 1958.*)

PART V - CIVIL JURISDICTION

59 Limits of jurisdiction.

- (1) Every magistrate shall have jurisdiction to hear and decide civil actions where either the plaintiff or the defendant resides in his district, provided that the amount claimed in any such action whether as debt, balance of account, or damages, or the value of the thing claimed does not exceed \$500. (*Amended by Act 29 of 1978.*)
- (2) Subject to the above, civil actions where the amount claimed whether as debt, balance of account, or damages, or the value of the thing claimed does not exceed \$1000, shall be tried by the Chief Police Magistrate. (*Added by Act 19 of 1942 and Amended by Act 29 of 1978.*)
- (3) The rules of procedure governing Civil cases in the Magistrates' and Chief Police Magistrate's Courts shall be the same as those for Civil Cases in the Supreme Court. In the Magistrates' Courts all matters that the Supreme Court Rules require to be dealt with by a Registrar shall be dealt with by the Magistrate. The Registrar of the Supreme Court shall be the Registrar of the Chief Police Magistrate's Court. (*Inserted by Act 29 of 1978.*)

60 Unlawful detention of goods.

- (1) Any person claiming to be entitled to the possession or ownership of any goods not exceeding \$100 in value which any other person detains and has refused to give up when demanded may bring a civil action in the Magistrate's Court claiming such goods from the person detaining them. And it shall be lawful for the magistrate to inquire into the title to such goods, or the right of possession of the same, and if it appears to him that the goods have been wrongly detained after being demanded, it shall be lawful for him to award the plaintiff the costs of the action and to order that the defendant shall, within a time to be specified in such order, restore to the plaintiff the goods so detained, or shall in default of such restoration pay to the plaintiff such sums as appears to the magistrate on the evidence to represent the value of the goods together with 20 per cent additional to such value.
- (2) If the defendant fails to comply with the magistrate's order he shall be committed to prison by the magistrate for any term not exceeding one year.

61 Contents and issue of summons.

- (1) All civil actions in a Magistrate's Court shall be instituted by summons. Such summons shall be in Form 2 in the Schedule hereto and shall contain the names and address of the plaintiff and defendant, the date on which the defendant is required to appear and a concise statement of the plaintiff's claim.
- (2) The magistrate shall read over every summons and affix his signature and seal thereto before issuing the same for service.

62 Service of summons.

Service of summonses in civil cases shall be effected and proved in the same manner as is prescribed by sections 17 and 18 of this Act for summonses in criminal matters.

63 Time for appearance.

Where the defendant resides in the district of the magistrate by whom the summons is issued, the date specified in the summons for the appearance of the defendant before the Court shall be not less than 48 hours after the service of the summons upon him and, where the defendant resides in the district of any other magistrate, shall be not less than 14 days after such service.

64 Hearing.

Both the plaintiff and the defendant shall be entitled to conduct their case in person or by a licensed lawyer.

65 Procedure where either party is absent and unrepresented,

- (1) If on the date of hearing specified in the summons either party is absent and unrepresented by a lawyer, the magistrate may strike out or adjourn the case, or may, upon proof of oath that the defendant was duly served with the summons, proceed with the hearing and decide the case notwithstanding the defendant's absence.
- (2) Where owing to absence of either the plaintiff or the defendant the hearing is adjourned, the magistrate shall cause notice of the date and time to which the hearing has been adjourned to be given to both parties.

66 Procedure where both parties appear.

Where on the date of hearing fixed by the summons both parties appear either personally or by a lawyer, the magistrate shall, unless an adjournment is granted upon reasonable grounds, proceed to hear and decide the case as follows —

- (a) the magistrate shall read or state briefly to the defendant the claim and shall ask him if he admits or disputes it. If the defendant admits the claim the magistrate shall forthwith enter judgment for the plaintiff together with the costs of summons;
- (b) if the defendant disputes the claim the magistrate shall order the witnesses on both sides to remain out of hearing of the Court until called on to give their evidence;
- (c) all evidence shall be upon oath or affirmation as prescribed by section 71 of this Act and the evidence of the plaintiff and his witnesses shall be taken before that of the defendant and his witnesses;
- (d) the procedure in regard to the right of cross-examination of witnesses and the rights of the parties or their lawyers to address the Court shall be the same as is prescribed by section 24 of this Act in criminal cases which a magistrate is empowered to hear and determine. (*Amended by Act 9 of 1958*);
- (e) at the conclusion of the case the magistrate shall either give judgment for the plaintiff or the defendant or shall adjourn the case for judgment to a future day;
- (f) in any civil action brought under this Part a magistrate may in his discretion grant to the successful party costs of the action. (*Added by Act 6 of 1963.*)

67 Enforcement of judgment.

The judgment of a magistrate for the payment of any money in a civil case, if not satisfied within 14 days exclusive of Sundays from the date thereof, may be enforced by the sale of the defendant's goods under a warrant of distress:

Provided always that the defendant in a civil case shall not be liable to imprisonment in default of distress.

PART VI - WITNESSES

68 Subpoenas to witnesses.

- (1) In any criminal or civil case, if any party requires any witness to be summoned to give evidence, he shall state the name and address of every such witness to the clerk who shall prepare a separate subpoena for each witness. Every subpoena shall be signed and sealed by the magistrate before being issued and service thereof shall be effected and proved in the same way as service of a summons upon an accused person.
- (2) A subpoena in a civil case may require a witness either to give evidence or to produce documents.

69 Penalty for non-attendance.

If any person summoned to attend as a witness in a civil or criminal case or to produce any document, fails or refuses to attend in obedience to the summons, the magistrate on proof upon oath of the summons having been duly served, may issue a warrant for his arrest. Upon the arrest of such person under the warrant he shall forthwith be brought before the magistrate who shall inquire into the grounds for his non-attendance and, unless it appears that such non-attendance was due to circumstances beyond his control, the magistrate may order him to be imprisoned for any term not exceeding 8 days without hard labour or to pay a fine not exceeding \$2. (*Amended by Act 2 of 1930.*)

70 Contempt of Court.

Whoever being a witness shall refuse to be sworn or affirmed, or shall refuse to give evidence when ordered to by the magistrate, or shall wilfully pretend to misunderstand the questions put to him, shall be deemed guilty of contempt of Court and may at the discretion of the magistrate be imprisoned for not less than one hour and not exceeding one month.

Explanation —

Any sentence for contempt of Court must be passed on the spot by the magistrate after due warning has been given to the witness, and the clerk shall at once make out the warrant and hand it to the police for execution. No person can be prosecuted for contempt at another sitting of the Court; the penalty must be inflicted at the time.

71 Evidence to be on oath or affirmation.

The evidence of every witness shall be given on oath, but any witness who from alleged conscientious motives objects to be sworn, shall be allowed to make a solemn affirmation which if untrue shall render him liable to the same penalties as are provided against persons guilty of perjury.

72 Administering oath or making affirmation.

The oath shall be administered as follows —

The person taking the oath shall stand and hold the Bible (or in the case of a Jew the Old Testament) in his uplifted right hand and shall repeat after the magistrate administering the oath “I swear by Almighty God that I will speak the truth in the evidence that I shall give before the Court” and shall kiss the Bible (or Old Testament) by touching the same with the lips or forehead or nose. Any person making an affirmation shall repeat after the magistrate “I solemnly and truly affirm that I will speak the truth in the evidence that I shall give before the Court”. (*Amended by Act 5 of 1963.*)

73 Fees of witnesses.

The Privy Council may from time to time make regulations providing for the payment of witnesses and fixing the amounts of the payments. (*Inserted by Act 7 of 1969.*)

PART VII - APPEALS

74 Right of appeal.

In every civil case and in every criminal case triable summarily any party shall have a right of appeal to the Supreme Court from the judgment, sentence or order of a magistrate. (*Substituted by Act 20 of 1966.*)

75 Notice of appeal, appeal fee and recognizance. Cap. 12.

- (1) The appellant shall within 10 days after the date of the magistrate's decision give written notice to the magistrate and to the other party stating his intention to appeal and the general grounds of such appeal.
- (2) The appellant shall also at the time of giving such notice deposit with the clerk the appeal fee prescribed by the Court Fees Act. (*Amended by Act 46 of 1988.*)

- (3) Upon notice of appeal being given and the appeal fee paid, bail may be allowed or refused at the discretion of the Magistrate by whom such decision was given, provided that the appellant may appeal within 14 days of any refusal of bail against such refusal by petition to the Judge of the Supreme Court. (*Substituted by Act 14 of 1969.*)

76 Stay of proceedings.

Where the Magistrate by whom such decision was given allows bail he shall require the appellant within 14 days after the date of the decision appealed from to enter into a recognizance in Form 17 in the Schedule hereto with or without a surety or sureties as the Magistrate may direct to appear and prosecute his appeal before the Supreme Court and to abide by the order of such Court and to pay such costs as it may award, and on such recognizance entered into as hereinbefore prescribed, the execution of the decision appealed from shall be stayed until the appeal has been disposed of and if the appellant is in custody, the Magistrate taking the recognizance shall liberate him. (*Substituted by Act 14 of 1969.*)

77 Documents to be forwarded to Supreme Court.

As soon as the provisions of section 75 hereof have been complied with by the appellant, the clerk shall forward to the Registrar of the Supreme Court —

- (a) the appellant's notice of appeal;
- (b) the recognizance entered into by the appellant;
- (c) a correct transcript of all proceedings in the case in the Magistrate's Court. (*Amended by Act 9 of 1958.*)

78 Notice of hearing.

The Registrar of the Supreme Court shall as soon as possible give written notice to the parties of the date fixed by the Supreme Court for the hearing of the appeal.

79 Evidence on appeal.

The decision of the Supreme Court on the hearing of appeals shall be given on the written evidence forwarded by the clerk, but the Supreme Court may in its discretion examine all or any of the witnesses produced before the magistrate and, on good cause shown by either party, may in its discretion admit fresh evidence and if necessary may adjourn the hearing for that purpose.

80 Power of Supreme Court.

- (1) The Supreme Court may adjourn the hearing of the appeal and may upon the hearing thereof affirm reverse or amend the decision of the magistrate, or may remit the case with the opinion of the Supreme Court thereon to the magistrate, or may make such other order (including any order as to the payment of costs by either party) as it thinks just and may by its order exercise any power which the magistrate might have exercised.
- (2) Where by any decision on appeal in a criminal case the appellant is acquitted, the Supreme Court shall order the criminal appeal fee of \$1 to be refunded to the appellant by the clerk.

81 Appeals to be decided on merits only.

No decision of a magistrate shall be reversed or varied for any defect in form therein or in any of the proceedings before the magistrate but every appeal shall be decided on its merits only.

82 Certificate of order of Supreme Court.

Immediately after the decision on appeal has been given the Registrar of the Supreme Court shall transmit to the magistrate a certificate in Form 18 in the Schedule hereto and such certificate shall be a sufficient authority to the magistrate for the execution of such decision and for the issue of any warrant of distress or commitment which may be required for its enforcement.

83 Payment of Costs.

- (1) The certificate shall state the amount of costs (if any) awarded by the Supreme Court and such costs shall be payable to the clerk.
- (2) If such costs are not paid within the time ordered by the Supreme Court, payment thereof may be enforced by the magistrate by warrant of distress.

PART VIII - MISCELLANEOUS

84 Magistrate's oath.

Every magistrate or person appointed to act in such capacity shall upon his appointment take and sign the following oath of allegiance and official oath —

OATH OF ALLEGIANCE

I swear by Almighty God that I will be loyal and bear true allegiance to His Majesty King Taufa'ahau Tupou IV the lawful King of Tonga, His Heirs and Successors according to Law. So help me God.

OFFICIAL OATH

I swear by Almighty God that I will well and truly serve His Majesty King Taufa'ahau Tupou IV in the office of Magistrate and will righteously and impartially administer justice in accordance with the Constitution and Laws of this Country without fear or favour. So help me God.

85 Administration of oath.

The oaths prescribed by the immediately preceding section shall be taken and signed in the presence of the Cabinet:

Provided always that in the case of the appointment of a magistrate for any island other than Tongatapu the Cabinet may in its discretion authorize the said oaths to be taken and signed in the presence either of the Governor of Vava'u or of the Governor of Ha'apai as shall appear most convenient and such Governor shall forthwith as soon as the said oaths have been so taken and signed forward the same to the Prime Minister to be placed on record.

86 Hearing to be in open court.

The hearing of every case shall be in open Court:

Provided that, where any charges of rape, adultery or other immorality, or the use of profane or indecent language, are being inquired into, the magistrate may order all women and children to be excluded from the Court:

And provided further that where any defendant appears to be below the age of 16 years and is not charged jointly with any person who appears to be above the age of 16 years, the magistrate may order that all persons be excluded from the Court except such as he shall permit to remain. (*Added by Act 7 of 1931.*)

87 Magistrate disqualified by interest.

- (1) A magistrate shall not adjudicate in any case in which he is personally concerned or in which any of his kindred are concerned as plaintiff or defendant.
- (2) The expression "kindred" in this section shall mean wife, child, grandchild, parent, grandparent, brother, sister, nephew, niece, uncle, aunt, cousin.

88 Magistrate not to accept presents.

A magistrate shall not on any pretext whatsoever receive any present, money or anything else from a party or the friend of a party in any case which has recently been tried or is about to be tried before him.

89 Compromises.

It shall be lawful for the plaintiff and the defendant to compromise or settle any civil case. In criminal cases other than indictable offences the prosecutor may withdraw the charge at any stage of the proceedings.

90 Variances and amendments in criminal cases.

Where at the hearing of any criminal case the evidence discloses a distinct offence from that charged in the summons or warrant, the magistrate shall dismiss the charge, but where there is merely a variance between the summons or warrant and the evidence as to the time or place at which the offence charged was committed, the magistrate shall amend the charge and if it appears to him that the defendant has been misled by the charge as originally stated, he may adjourn the further hearing of the case to some future day.

91 Enforcement of recognizance.

- (1) Where a recognizance is conditioned for the appearance of any person before a magistrate or for his doing any other act or thing to be done before a magistrate or in a proceeding in a Magistrate's Court, the magistrate, if such recognizance is shown to him to be forfeited, may declare the same to be forfeited and may enforce payment of the sum due thereunder in the same manner as if such sum were a fine which had been imposed by a magistrate on summary conviction.
- (2) All sums payable in respect of a recognizance declared by a magistrate to be forfeited shall be paid to the clerk, by whom they shall be paid into the Treasury and accounted for in the manner in which fines imposed by the Court are accounted for.

92 Actions against magistrates.

A magistrate may be sued in the Supreme Court in a civil action for damages in respect of any act done by him as such magistrate: Provided always —

- (a) that where the act in respect of which damages are claimed was within the magistrate's jurisdiction, no action shall lie unless it shall

- be proved that such act was done by him maliciously and without reasonable and probable cause; and
- (b) that no such action shall be brought against any magistrate unless the same be commenced within 6 calendar months next after the act complained of has been committed.

93 Affidavits.

- (1) Every affidavit shall state the name address and occupation of the deponent and shall be divided into consecutively numbered paragraphs. The affidavit shall be read aloud to the deponent, who, holding the Bible in his uplifted right hand, shall take the following oath: "I swear by Almighty God that the contents of this my affidavit are true in every respect." The deponent shall then kiss the Bible by touching the same with the lips or forehead or nose and sign the affidavit. (*Amended by Act 5 of 1963.*)
- (2) At the foot or end of every affidavit shall be appended the words:
- "Sworn before me aton the
..... day of19Magistrate for
the District of"
- and the magistrate shall insert therein the date on which the affidavit is sworn and shall affix his signature and seal thereto.

94 Payment of fees.

All fees shall be paid in advance to the clerk in criminal and civil cases:

Provided always that—

- (a) no fees shall be payable in proceedings for any offence triable only before the Supreme Court;
- (b) where proceedings for any offence punishable on conviction before a magistrate either by fine or imprisonment without the option of a fine, are instituted by a public officer in the discharge of his duties as such, no fees shall be payable save that, where any fine imposed in such proceedings is leviable by distress, the fees for any distress warrant issued shall be payable by the defendant;
- (c) in proceedings for the recovery of any dues, taxes or other moneys of ascertained amount due and payable to the Government, no fees shall be payable by the complainant, but the defendant, if judgment is given against him, shall pay the fees for the summons and for the warrant of distress (if any) issued to enforce such judgment.

95 Magistrates' clerks.

The Prime Minister with the consent of the Cabinet may appoint fit persons to be clerks to the several magistrates and, as often as any vacancy occurs in their number from any cause whatsoever, may with the like consent appoint some other person to fill such vacancy either permanently or temporarily.

96 General duties of clerks.

- (1) The clerk shall attend all sittings of the Magistrate's Court in his district and shall record the evidence and particulars of any trial or inquiry before the magistrate. He shall make out all summonses, warrants, orders, commitments and other documents which the magistrate may direct, and shall obey all lawful orders given to him by the magistrate. He shall have charge of the Seal of the Court and shall furnish to any applicant, on payment of the proper fees, certified copies of the magistrate's decision in any case.
- (2) He shall receive all fees, fines and moneys payable to the Court and shall pay the same to the Treasurer or Sub-Treasurer in his district.
- (3) He shall furnish to the Supreme Court —
 - (a) transcripts of the record in every case where he is required so to do by law or by the order of the Chief Justice;
 - (b) an annual return of the cases disposed of in the Magistrate's Court in his district;
 - (c) an annual return of the births marriages and deaths registered in his district;
 - (d) an annual return of the tax exemptions granted in his district:

Provided that the clerk in Nuku'alofa shall be exempt from furnishing the annual returns specified in paragraphs (c) and (d) of this sub-section.

97 Power to make rules, etc.

The Chief Justice may from time to time with the consent of the Cabinet make rules for the holding of Magistrates' Courts in the Island of 'Eua and the out-islands of the Ha'apai group, for the conduct of the magistrates' clerks in the discharge of their duties, and generally for carrying out and giving effect to the provisions of this Act.

THE SCHEDULE**LIST OF FORMS**

1. Summons to Accused in a Criminal Case.
2. Summons to Defendant in a Civil Case.
3. Affidavit of Service where a Summons is served out of the district in which it was issued.
4. Warrant of Arrest.
5. Affidavit to ground Search Warrant.
6. Search Warrant.
7. Summons to Witness in a Criminal Case.
8. Summons to Witness in a Civil Case.
9. Warrant of Commitment on Sentence of Imprisonment.
10. Warrant of Commitment in Default of a Penalty.
11. Warrant of Distress.
12. Warrant of Commitment in Default of Distress.
13. Recognizance of Bail.
14. Recognizance to give evidence at trial before Supreme Court.
15. Conditional Recognizance to give evidence at trial of accused before the Supreme Court.
16. Notice of intention to take evidence of a witness who is dangerously ill or will be absent from the Kingdom when the accused is tried.
17. Recognizance on Appeal.
18. Certificate of Order on Appeal from Magistrate.
19. Prosecutor's Notice to Magistrate of application for committal without witnesses.
20. Prosecutor's Notice to accused of application for committal without witnesses.
21. Record of committal proceedings without witnesses.

FORM 1

SUMMONS TO ACCUSED IN A CRIMINAL CASE.

(Section 14)

No Magistrate's Court, District of

To of

Complaint has been made to me that you on the..... day of

19..... at..... did

You are, therefore, hereby summoned to appear before me at the Magistrate's

Court at on

the day of 19 at the hour of in the forenoon.

And take notice that if you fail to obey this summons a warrant may be issued for your arrest.

Dated the day of 19

..... Magistrate for the above mentioned district.

FORM 2

SUMMONS TO DEFENDANT IN A CIVIL CASE.

(Section 61)

No Magistrate's Court, District of
Civil Jurisdiction.

Between Plaintiff

Address and
..... Defendant

Address

To of

You are hereby summoned to appear before me at the Magistrate's Court at
..... on the
day of 19 at the hour of ten in the forenoon to answer the
undermentioned claim of the plaintiff

And take notice that if you fail to appear the case may be heard and decided in your
absence.

Dated the day of 19
..... Magistrate for the above mentioned district.

Particulars of Claim.

The claim of the plaintiff is for \$ for

FORM 3

AFFIDAVIT OF SERVICE WHERE A SUMMONS IS SERVED OUT OF THE DISTRICT IN WHICH IT WAS ISSUED.

(Section 18)

..... Magistrate's Court, District of

I Police Constable ofmake oath and say —

1. That on the day of 19 I received for service Summons No at the suit of against

2. That I served the aforesaid Summons at on the day of..... 19..... at the hour of.....in the noon by delivering it to*

Sworn on the day of 19 at

Before me Magistrate for the above mentioned district.

*State whether to the defendant personally or to whom.

FORM 4

WARRANT OF ARREST.

(Section 52)

No Magistrate's Court, District of

To each and all of the Police Officers within the Kingdom of Tonga. You are hereby commanded to arrest

of and to bring him before me to answer the charge that he did on the day of 19

Dated the day of 19

..... Magistrate for the above mentioned district.

*State here the offence charged against the accused.

FORM 5

AFFIDAVIT TO GROUND SEARCH WARRANT

(Section 51)

No Magistrate's Court, District of

I of make oath and say —

1. That the following goods the property of this deponent to wit*.....
..... were on or about the day of 19
stolen from and out of the † of the said
situate at

2. That this deponent hath reasonable cause to suspect and doth suspect
that of has ‡.....
the said property on or with respect to which the said offence has been committed.

Sworn on the day of 19 at

Before me Magistrate for the above mentioned district.

*Insert here the description of the stolen articles.

†State here “dwelling house” or “store” as the case may be.

‡State here “in his possession” or “on his premises” as the case may be.

FORM 6

SEARCH WARRANT.

(Section 51)

No Magistrate's Court, District of

To Inspector of Police

Whereas it appears on the oath of of

that the following goods, namely*

have been stolen and that there is reason to suspect that the said things are†

..... of of

You are therefore hereby commanded in the King's name to enter the‡

..... of the said in the day time and there diligently search for the said articles and if the same or any of them or any stolen property whether or not shown on this warrant shall be found upon such search to bring the things so found and the persons in whose possession they are found before me.

Dated the day of19

..... Magistrate for the above mentioned district.

*Insert here description of the goods.

†State here “in the possession” or “on the premises” as the case may be.

‡Insert here “dwelling house and premises” or as the case may be.

FORM 7

SUMMONS TO WITNESS IN A CRIMINAL CASE.

(Section 68)

No Magistrate's Court, District of

To of

You are hereby summoned to appear before the Magistrate's Court at

on the day of 19 at the hour of ten in the forenoon and to testify what you know in the matter charged against

..... of that he did on the day of 19 *

And take notice that if you fail to obey this summons you may be imprisoned for any term not exceeding 8 days without hard labour.

Dated the day of 19

..... Magistrate for the above mentioned district.

* Here state charge.

FORM 8

SUMMONS TO WITNESS IN A CIVIL CASE

(Section 68)

No Magistrate's Court, District of
Civil Jurisdiction.

Between of Plaintiff
and of Defendant
To of

You are hereby required to attend before the Magistrate's Court at
..... on the day of 19 at the hour of ten
in the forenoon to give evidence in the above case on behalf of the*

And take notice that if you fail to obey this summons you may be imprisoned for any
term not exceeding 8 days without hard labour.

Dated the day of 19
..... Magistrate for the above mentioned district.

*Insert here "plaintiff" or "defendant" as the case may be and if the witness is required
to produce any documents add "and to produce the following documents" enumerating
them.

FORM 9

WARRANT OF COMMITMENT OF SENTENCE OF IMPRISONMENT

No Magistrate's Court, District of

To each and all the constables within the Kingdom and to the gaoler of the prison at

hereinafter called the defendant has been this day before the Magistrate's Court at

convicted and sentenced to be imprisoned for the space of

You the said constables are hereby commanded to convey the defendant to the said prison together with this warrant and you the gaoler of the said prison to keep the defendant imprisoned for the space of

Dated the day of 19

..... Magistrate for the above mentioned district.

FORM 10

WARRANT OF COMMITMENT IN DEFAULT OF A PENALTY

No Magistrate's Court, District of

To each and all the constables within the Kingdom and to the gaoler of the prison at

of (hereinafter called the defendant) was convicted

before the Magistrate's Court at

and ordered to pay the sum of and

for costs and in default of such payment to be imprisoned for the space of

And default having been made in payment

You the said constables are hereby commanded to convey the defendant to the said prison and there to deliver him to the gaoler together with this warrant and you the gaoler of the said prison to keep the said defendant imprisoned for the space of

unless the said sum of be sooner paid.

And if the defendant should pay any part of the said sum you shall set him at liberty when he shall have completed a proportion of his sentence equal to that portion of the said sum which shall be still unpaid.

Dated the day of 19

..... Magistrate for the above mentioned district.

FORM 11

WARRANT OF DISTRESS.

(Section 53)

No Magistrate's Court, District of

To Police Officer and to each and all of the constables within the Kingdom of

(hereinafter called the defendant) was on the day of

19 adjudged to pay the sum of and for costs.

And default having been made in payment

You are hereby commanded to forthwith make distress of the goods of the defendant (except his house and fixtures, his growing crops, the wearing apparel of him and his family and to the value of \$200 the tools of his trade) and unless the total amount to be levied stated at the foot of this warrant shall be sooner paid to sell the said goods, by public auction at the village of and to pay the proceeds of such sale to the Clerk of the above Magistrate's Court and if no such distress can be found to certify to that effect to the undersigned magistrate.

Dated the day of 19

..... Magistrate for the above mentioned district.

\$

Amounts adjudged

Costs

Costs of this Warrant

Total amount to be levied

FORM 12

WARRANT OF COMMITMENT IN DEFAULT OF DISTRESS: APPLICABLE IN CRIMINAL CASES ONLY.

(Section §8)

No Magistrate's Court, District of

To each and all of the constables within the Kingdom and to..... and gaoler of the prison at of (hereinafter called the defendant) was convicted before the Magistrate's Court at

.....and it was adjudged that the said defendant should pay the amount of

and that in default of payment the said amount should be levied by distress

and that in default of sufficient distress the defendant be imprisoned

And default having been made in payment a warrant was issued authorizing the levy of the sum of by distress.

And it now appearing that no sufficient distress whereon to levy the said sum could be found*

You the said constables are hereby commanded to convey the defendant to the said prison and you the gaoler of the said prison to keep the said defendant imprisoned for

..... unless

the aforesaid† of be sooner paid. And if the defendant should pay any part of the said sum of

you shall set him at liberty when he shall have completed a proportion of his sentence equal to that proportion of the said sum which shall be still unpaid.

Dated the day of 19
..... Magistrate for the above mentioned district.

*If any portion of the amount was realised by the distress state here "and that a balance of \$ is due under such judgment".

†Insert here the word "sum" or "balance" whichever accords with the facts.

FORM 13

RECOGNIZANCE OF BAIL

(Section 49)

No Magistrate's Court, District of

Whereas the undersigned of (hereinafter called the defendant) was this day charged before the above Court for that he on

the day of 19 at did*

Now therefore the defendant hereby binds himself to perform the following obligation —

†To attend the Magistrate's Court at on the day of 19 to answer the aforesaid charge; or

†To attend the Sessions of the Supreme Court to be held at next after the date of these presents and there to surrender himself and stand his trial upon such charges as may be preferred against him.

And the defendant together with the undersigned sureties hereby acknowledge themselves to forfeit to the Crown the sums following to be levied on their several goods, namely the defendant the sum of \$ and the Sureties the sum of \$ each, in case the defendant fails to perform the above obligation.

.....
.....
.....

Taken before me this day of 19
..... Magistrate for the above mentioned district.

*Here state charge

†The magistrate shall strike out whichever obligation the defendant is not bound to perform.

FORM 14

RECOGNIZANCE OF WITNESS TO GIVE EVIDENCE AT TRIAL OF ACCUSED BEFORE THE SUPREME COURT.

(Section 39)

No Magistrate's Court, District of

We the undersigned of
..... of
..... of
..... of
..... of

severally acknowledge ourselves to owe to His Majesty the King of Tonga

the sum of..... each to be levied on our several goods if we the several persons so bound as aforesaid fail in the hereunder written condition.

.....
.....
.....
.....
.....

Taken before me this day of 19
..... Magistrate for the above mentioned district.

Condition

The condition of the above recognizance is such that whereas
..... of was charged before me the above named magistrate for that he on the day of 19
at did if therefore the said shall appear at the next session of the Supreme Court to be held at
..... in the month of 19 and there give such evidence as they respectively know upon the charge there preferred against the said
..... in respect of the aforesaid offence then the said recognizance shall be void or else shall stand in full force and effect.

FORM 15

CONDITIONAL RECOGNIZANCE TO GIVE EVIDENCE AT TRIAL OF ACCUSED BEFORE THE SUPREME COURT.

(Section 40)

No Magistrate's Court, District of

We the undersigned of

..... of

..... of

..... of

..... of

severally acknowledge ourselves to owe to His Majesty the King of Tonga

the sum of..... each to be levied on our several goods if we the several persons so bound as aforesaid fail in the hereunder written condition.

.....
.....
.....
.....
.....

Taken before me this day of 19

..... Magistrate for the above mentioned district.

Condition

The Condition of the above recognizance is that whereas

..... of was charged before

me the abovenamed magistrate for that he on the day of 19

at did if therefore the said

shall appear at the next Session of the Supreme Court to be held at

in the month of 19 if required so to do by notice served upon them by a police officer and there give such evidence as they

respectively know upon the charge there preferred against the said

in respect of the aforesaid offence then the said recognizance shall be void but otherwise shall stand in full force and effect.

FORM 16

NOTICE OF INTENTION TO TAKE THE EVIDENCE OF A WITNESS WHO IS DANGEROUSLY ILL OR WILL BE ABSENT FROM THE KINGDOM WHEN THE ACCUSED IS TRIED.

(Section 44)

No Magistrate's Court, District of
T. A.B. of

Take notice that it having been made to appear to me that X.Y. ,of
..... who is* is able to give evidence in
relation to the matter whereof A.B. is accused the evidence of the said

X.Y. will be taken at on the day of
19 at o'clock in the noon
on which occasion you or your counsel may attend and cross-examine the said X.Y.
And take further notice that whether you attend or not the evidence then taken may be
given at the trial of the said A.B. notwithstanding your absence when it was taken.

Dated the day of 19
..... Magistrate for the above mentioned district.

*State here “dangerously ill” or “about to leave the Kingdom” as the case may be.

FORM 17

RECOGNIZANCE ON APPEAL.

(Section 76)

No Magistrate's Court, District of

We the undersigned severally acknowledge ourselves to owe to His Majesty the King of Tonga the several sums following namely of as principal the sum of and of and of as sureties the sum of each to be levied on our several goods if the said principal fail in the hereunder written condition.

(SIGNED).....
.....
.....
.....

Taken before me this day of 19
..... Magistrate for the above mentioned district.

Condition

The condition of the above recognizance is that the said shall personally appear before the Supreme Court and prosecute an appeal against a certain decision of the magistrate for the above named district given on the day of 19 whereby the said was* and shall abide the judgment of the Court thereon and shall pay such costs as may be ordered by the said Court then this recognizance shall be void but otherwise shall remain in full force.

*If a criminal case say "was convicted for that he on the day of in the island of unlawfully did (stating the offence)".

FORM 18

CERTIFICATE OF ORDER ON APPEAL FROM MAGISTRATE.

(Section 82)

Kingdom of Tonga

In the Supreme Court

..... Appellant

..... Respondent

At a sitting of the Court held on the day of 19
the Court in the matter of the above Appeal made the following order:

That the Magistrate's judgment be*

And that do pay to the † the sum of
..... for costs.

..... Clerk of the Supreme Court.

*"Affirmed," "reversed" or "varied" as the case may be.

†"Respondent" or "Appellant".

FORM 19

**PROSECUTOR'S NOTICE TO MAGISTRATE OF APPLICATION FOR
COMMITTAL WITHOUT WITNESS.**

(Section 42)

Case Number

Name of accused

Address

Occupation

Date of Birth

Charge

TAKE NOTICE that upon the appearance of the accused in answer to the Summons issued to him the Prosecutor will apply for the accused to be committed for trial to the Supreme Court without the calling of witnesses.

Dated the day of 19

To the Magistrate

..... District

Prosecutor

FORM 20

**PROSECUTOR'S NOTICE TO ACCUSED OF APPLICATION FOR
COMMITTAL WITHOUT WITNESSES.**

(Section 42)

To (Name of Accused)

of (Address of Accused)

Charged with (state offence)

TAKE NOTICE that when you appear in answer to the summons issued against you, the Prosecutor will apply for you to be committed for trial to the Supreme Court without the calling of witnesses.

If you consent to this, you will be given, by the Magistrate, a summary of the prosecution witnesses' statements, a list of exhibits, and a copy of any documentary exhibits. The witnesses will be called to give evidence in person at the Supreme Court except in the case of statements marked "conditional witness" in which case the witness will not be called unless you request it.

If you do not consent, then the prosecutor will call his witnesses before the magistrate and you may ask them questions, give evidence yourself, call witnesses and submit that your case should not be committed for trial.

Dated the day of 19

.....

PROSECUTOR

FORM 21

RECORD OF COMMITTAL PROCEEDINGS WITHOUT WITNESSES.

(Section 42)

1. On the day of 19
the accused appeared before me, charged with the
offence of
 2. I told the accused of the offence with which he is charged.
 3. I explained to the accused that he was not required to plead or answer at
that stage.
 4. I told the accused that if he consented he would be committed to the
Supreme Court without the calling of witnesses and that he would be
served (if he so consented) with a summary of the prosecution witnesses'
statements, a list of exhibits and a copy of any documentary exhibits.
 5. I told him that if he did not consent, then the prosecutor would call his
witnesses who might be cross-examined, that the accused could give
evidence, call witnesses and submit no case to answer.
 6. He chose to be committed without witnesses.
 7. I caused him to be given a set of documents as described in paragraph 4.
 8. I committed the accused in custody (or on bail of \$ with
..... sureties of \$ each)
 9. One set of documents as described in paragraph 4 is forwarded herewith.
- Dated this day of 19

.....
MAGISTRATE
.....

DISTRICT