THE CODE OF CRIMINAL PROCEDURE

OF THE EGYPTIAN NATIVE TRIBUNALS

AS AMENDED BY

I, AW No. 6 OF 1905.

THE

LAW CONSTITUTING MARKAZ TRIBUNALS

(LAW No. 8 of 1904)

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AS AMENDED BY

LAW No. O OF 1906 AND LAW No. 6 OF 190T „

AND

THE LAW CONSTITUTING COURTS OF ASSIZE

(LAW No. 4 of 1905).

(TRANSLATION)

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CODE OP CRIMINAL PROCEDURE.

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r THE CODE OF CRIMINAL PROCEDURE,

LAW No. 4, 1904.

DECREE OF PROMULGATION.

We, Khedive op Egypt,

Having taken into consideration the Khedivial Deciee dated the 14th June 1883, providing for the reorganisation of the Native Tribunals ;

Having taken into consideration the Decree of the 14th November 1883 providing for the promulgation of the Code of Criminal Procedure at present in. force before the said Tribunals ;

On the proposition of our Minister of Justice and with the approbation of Our Council of Ministers ;

Having he.ard the Legislative Council ;

Hereby Decree as follows ;

1. The Code of Criminal Procedure at present in force

is replaced by that which is impressed with the seal of Our Minister of Justice and annexed to the present Decree.

2. The rules of procedure prescribed by the New Code shall apply to all investigations which have not been concluded at the date at which this Code comes into force and to every matter sent for trial before some tribunal after that date.

Every judgment pronounced after that date shall be enforced in accordance with the provisions of the New Cede.

3. Our Minister of Justice is charged with the execution of this Decree which shall come into force on the 15th April 1904.

Done at Abdine Palace this 27th day of Zilkadeh 1321 (14th February 1904).

ABBAS HILMI
Signed by the Khedive :

MOUSTAFA FEHMY,

President of the Council of Ministers.

Ibrahim Fuad.

Minister of Justice.

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THE CODE OF CRIMINAL PROCEDURE.

PART I.

OF PRELIMINARY PROCEDURE.

CHAPTER I.

GENERAL RULES.

1 . A penalty prescribed by law for a crime, misdemeanour, or contravention can only be imposed by virtue of a judgment pronounced by a competent judicial authority.

2. The public prosecution of offences having for its object the infliction of a penalty can only be conducted by the State representative.

3. The functions of judicial, police, which consist in furnishing materials for the investigation and prosecution, are performed by the officers of judicial police and the agents under their control.

4. The following persons are officers of judicial police, in the districts in which they respectively are employed :

Members of the parquet ;
Sub-governors and sub-mudirs ;

Commandants of police of mudirias and governorates, and their deputies ;
Mamours-zapt ;

Mamours-markaz and mamours-kism ;
Moawins of mudirias and governorates ;

Moawins and mulahiz of police ;

Chiefs of the police outposts ;

Station masters and assistant station masters on the Egyptian railways ;

Omdas, and, in case of their absence or inability to act, the sheikhs who act for them ;

Sheikhs of ghaffirs ;

All officials on whom the powers of the office are conferred by decree, either in respect of certain districts or in respect of offences relating to their departments.

5. Except in a case where the law so provides, or in a case of flagrant delict, or of a call for help coming from inside, or of fire or flood, no one may enter an inhabited house, other than a house which is open to the public or used for some industry or trade which is subject to police inspection, unless he does so under a warrant issued by a Court of Justice.

CHAPTER II.

OP JUDICIAL POLICE.

6. Every duly constituted authority, every official, officer of judicial police, or administrative agent who during the performance of his duties becomes aware of the commission of an offence is bound to give notice thereof to the parquet immediately.

7. Every person who witnesses a crime, whether it be one against the safety of the State or one against the life or property of an individual, is similarly bound to report it to the parquet or an officer of judicial police.

In a case of flagrant delict or of circumstances deemed to constitute flagrant delict, when an act is committed which justifies preventive arrest, such person shall also bring the accused before a member of the parquet or hand him ove r

to an officer of judicial police or to a representative of the public authority, and for that purpose no warrant shall be necessary.

8. Flagrant delict takes place when the alleged offence is either being committed or has just been committed.

Cases where, within a short time of the commission of the" act, the accused is pursued by the person wronged or by a public hue and cry^ or is found in possession of implements, arms, goods, or papers which raise a presumption of his guilt either as principal or as accessory, sh^U be deemed to be cases of flagrant delict.

9. It is the duty of every officer of judicial police to receive reports of the commission of crimes, misdemeanours contraventions which are made to him in the district in which he is employed, and to transmit such reports imme- diately to the parquet of the tribunal which has jurisdiction to try the case.

10. It is the duty of an officer of judicial police, and of every agent of his, to collect all the information and ascertain all the facts necessary for assisting the investigation of the cases which are thus reported to him or which come to his knowledge in any other manner, and to take all precautionary measures necessary for the proper proof of the alleged offence. He shall draw up a proces- verbal of all measures taken as aforesaid, and such proces- verbal shall be transmitted to the parquet together with the incriminating statement.

11. In a case of flagrant delict, the officer of judicial police should proceed without delay to the spot, draw up

the necessary proce3- verbal, ascertain that the offence has actually been committed and the circumstances under which it was committed and the condition of the scene of

the offence, and take the depositions of any persons who were present or who can give information as to the act or as to the perpetrator thereof.

12. He may forbid the persons present to withdraw or to leave the spot until the procSs- verbal is closed, and may summon any person able to give information as to the facts to attend at once.

13. He shall record in his proc&s-verbal any disobedience to any order given as aforesaid, and any refusal to appear on the part of any person summoned.

14. Any person guilty of such disobedience or refusal as aforesaid shall, upon consideration of his proces-verbal which shall be received as proof of the facts, be sentenced by the contraventional tribunal to imprisonment not exceeding a week, or fine not exceeding L.E. 1.

15. In a case of flagrant delict and when a presumption arises of the commission of a crime or attempted crime, or of a misdemeanour of theft, obtaining by false pretences or serious violence, or when the accused has no known or fixed abode in Egypt, the officer of judicial police may cause any accused person present, against whom there is strong prima facie evidence, to be arrested, and, after hearing his explanations, shall, if he fails to clear himself, send him within the next twenty-four hours to the place where the tribunal having jurisdiction sits, in order that he may be at the disposal of the parquet. The parquet shall proceed to interrogate him within twenty-four hours of his arrival.

16. In any such case as aforesaid, if the accused person is not present, the officer of judicial police may issue a warrant of apprehension. The issue of such warrant shall be mentioned in the proces-verbal.

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17. The warrant of apprehension shall be delivered to

any bailiff or representative of public authority.

18. In a case of flagrant delict the officer of judicial f police may make a search at the house of the accused ; it

shall be his duty to seize, wherever found, any arms, implements, or other thing which he considers might have been used in the commission of the offence or is likely to assist ^ in the elucidation of the truth. He shall draw up a proces-

verbal of the steps which he takes.

19. It shall also be his duty to seize any papers found at the abode of the accused.

20. Any articles seized shall be enclosed and tied up under seal, and an entry shall be made, on a slip of paper comprised in the sealed bundle, of the date of the proces-verbal, of the seizure, and of the case in respect of which the seizure was made.

21. Every article seized and not claimed by the owner within three years of the seizure shall by operation of law become the property of the State.

22. When the article seized is of a perishable nature, or when the cost of its preservation would exceed its value, the parquet may sell it by public auction as soon as the requirements of the investigation permit. In such a case the rights of the owner shall be transferred to the purchase money, and shall be exerciseable within the above-mentioned period.

23. An officer of judicial police may make a domiciliary search at the abode of any person under police supervision, even when there has been no flagrant delict, if he has good reason to suspect that such person has been guilty of a crime or misdemeanour.

Such search shall only be made in the presence of the omda of the village and a sheikh, or of a sheikh representing the omda and another sheikh in the case of the absence of the omda, and, in towns, in the presence of the sheikh of the quarter and one witness.

If his suspicions prove to be well founded, the accused person may be arrested and handed over to the parquet.

24. An officer of judicial police may avail himself of the assistance of any experts or medical men. He shall request them to report on any point on which their profession

enables them to throw light, and shall administer to them an oath that they will testify according to their honest belief.

25. Whenever the State representative intervenes in an investigation which has already been begun in a case of flagrant delict, he shall continue the procedure entered upon by the officer of judicial police who precedes him, or shall authorise the continuance thereof by such officer.

26. He may, when he proceeds to hold the investigation himself, entrust any officer of judicial police with any part of the duties which are within his powers.

27. An officer of judicial police shall in all cases give notice to the State representative whenever he is proceeding anywhere in order to undertake an investigation in a case of flagrant delict.

28. Every officer of judicial police when engaged on a case of flagrant delict, or when delegated by the State representative, shall be entitled to call in personally the aid of the public authority.

CHAPTER III.

OP THE CONDUCT OP THE INVESTIGATION BEFORE THE PARQUET, OP PREVENTIVE ARREST, AND OP PROCEEDINGS BY THE STATE REPRESENTATIVE.

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29. Whenever as the result of a report, a proces-verbal drawn up by an officer of judicial police, or of any other information which has come to its knowledge, it shall appear to the parquet that an offence has been committed, it shall cause such investigation to be held, either by one of its own members or by an officer of judicial police acting under its orders, as it shall deem necessary for the elucidation of the truth.

30. (a) The parquet shall be entitled to make a domiciliary search at the house of any person accused of a crime or a misdemeanour, or to delegate the right to make such search to an officer of judicial police.

(b) The parquet or an officer of judicial police to whom such right has been delegated may also in a case of crime or misdemeanour, and with the previous written authorisa-

tion of the summary judge, proceed to any other place which strong prima facie evidence obtained in the course of the investigation points to as the hiding place of any article which will be of assistance in the discovery of the truth.

(c) The parquet may in a case of crime or misdemeanour, with the like authorisation, seize any letters, missives, newspapers, or printed matter in the hands of the Post Office or messages in the hands of the Telegraph Department which it may consider to be of assistance in the elucidation of the truth.

(d) The summary judge shall give the authorisation mentioned in the two preceding paragraphs after making himself acquainted with the documents in the case, and, if he thinks fit, after hearing the person against whom it is proposed to make the search or effect the seizure.

31. The parquet is entitled to hear any person whose evidence it may consider useful, and to avail itself of the assistance of experts. Such witnesses and experts shall give evidence on oath ; provided that the parquet may, if it thinks fit, hear depositions made by way of simple statement and without taking an oath.

32. Any member of the parquet who conducts an investigation shall be assisted by a clerk, who shall draw up a proces-verbal of the depositions under the direction of such member of the parquet. The provisions of art. 84 shall apply to such proces-verbal.

33. Any witness summoned by a bailiff or representative of public authority who either fails to appear or refuses to answer after appearing shall be dealt with as provided in art. 85 and 87 of this Code. The sentences prescribed by these articles shall be pronounced in the usual way by the summary judge of the place where the witness has been summoned to appear.

34. (a) The accused and the civil claimant may be present at every step in the investigation, subject to the right of the parquet to proceed without them if it is considered necessary for the elucidation of the truth.

(b) The advocates of the parties may, subject to the like exception, be present at the hearing of the witnesses and the interrogation of the accused, but may not speak without the leave of the investigating member of the parquet.

(c) The accused shall be heard on any defence raised

by him, and his statements shall be verified. Notes shall be taken of his interrogation in the same manner as of that of the witnesses.

35. If the offence charged is a crime or a misdemeanour punishable by imprisonment, the parquet may issue a

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warrant to apprehend and bring before it any accused person against whom there is strong prima facie evidence. The interrogation of the accused shall take place within twenty-four hours of the execution of the warrant.

36. The parquet may also in the like circumstances 9 when there is a sufficient prima facie case, issue a warrant of arrest in any of the following cases :

(1) If the accused has been brought before the parquet under arrest by an officer of judicial police in conformity with art. 15 of this Code ;

(2) If the accused fails to appear though duly summoned ;

(3) If the offence charged is a crime, a misdemeanour punishable by imprisonment for two years or upwards, or one of the misdemeanours falling under arts. 88, 120 ? 148, 162, 192, 240, 249, 307, 308, 310, 323, 324, or 325 of the Penal Code. In all other cases the State representative shall not be entitled to issue a warrant of arrest without the previous written authorisation of the summary judge.

The accused shall be interrogated within twenty-four hours of the execution of the warrant.

37. A warrant of arrest issued by the State representative without the previous authorisation of the summary judge shall only remain in force for the four days following the arrest of the accused, or, when he has already been arrested, his appearance before the parquet, unless the parquet shall meanwhile have obtained the written authorisation of the summary judge for an extension of such period. The accused shall have the right to be heard before the judge ; his application for the purpose must be made to the parquet or to the director of the prison within two days of his arrest.

When the accused has been brought before the parquet under arrest and the parquet issues a warrant of arrest against him, the above-mentioned periods shall run from the day of his appearance before the parquet.

38. When a warrant is issued with the authorisation of the summary judge, the accused, if he has not already been heard by the judge, shall be entitled to make opposition to the issue of the warrant before such judge upon making application for the purpose to the parquet or to the director of the prison within two days of his incarceration. His opposition shall be adjudicated on within three days of his application.

39. No warrant of arrest shall remain in force for a longer period than fourteen days unless an extension of such period is authorised by the summary judge. The accused shall be entitled to be heard again on making application for the purpose three clear days before the expiration of such period of fourteen days.

40. Arts. 95, 96, 97, 99, 100, 101, 111 and the first paragraph of art. 103 shall apply to. warrants of apprehension and warrants of arrest issued by the parquet. The parquet shall have the power conferred by art. 102 on the examining judge.

41. The parquet may at any time release the accused on bail. The summary judge may similarly release him whenever the parquet applies to extend the currency of a warrant of arrest. Arts. 110, 113, 114, 115 shall apply to cases under this article.

42. (a) If as a result of the investigation the parquet is of opinion that there is no ground for further proceedings it shall order the case to be filed ; in criminal cases such an

order shall only be made by the chief of the parquet or by his representative.

(6) An order for filing shall be a bar to any revival of proceedings by the State representative unless the Public Prosecutor annuls such order within three months of its date, or unless fresh evidence within the meaning of art. 127, § 2, is produced before the proceedings are barred by prescription,

43. If the parquet is of opinion that a case of crime, misdemeanour, or contravention has been sufficiently established against one or more definite persons, it shall bring the case before the proper tribunal by summons.

Provided always that in a criminal case or in a case of misdemeanour of falsification, bankruptcy, obtaining by false pretences, or abuse of confidence, the parquet may bring the case before an examining judge if it thinks fit.

44. When the parquet has brought a case before a tribunal, the accused against whom a warrant of arrest has been issued may apply to the judge or tribunal having cognisance of the case for his release. The judge or the tribunal shall adjudicate on the application in chambers after hearing the State representative, and the decision shall be final.

45. (As amended by Law No. 6 of 1905.) The criminal chamber of the Court of Appeal may remove to itself any proceedings by the State representative in accordance with the provisions of art. 60 of the Decree for reorganisation of the Native Tribunals.

CHAPTER IV.

OF COMPOUNDING IN CASES OP CONTRAVENTION.

46. A case of contravention may be compounded except in the three following cases :

(1) When the law prescribes a sentence other than one of fine in respect thereof ;

(2) When the contravention consists in a breach of the regulations for public establishments ;

(3) When the offender has been convicted or has compounded for another contravention committed within the three months preceding the offence with which he is charged.

47. The offender who wishes to compound shall, before the hearing, and in any case within eight days of the receipt

' by him of notice of the first step in the proceedings, pay, against receipt, the sum of P.T. 15 to the treasury of the tribunal or to the parquet or to any officer of judicial police authorised by the Minister of Justice to receive the same.

48. In every case in which compounding is permitted such payment shall discharge the proceedings by the State representative. The injured party cannot afterwards bring the case before the tribunal by means of a direct summons : he is left to his remedy by civil action for damages.

CHAPTER V.

OF COMPLAINTS AND OF THE CIVIL CLAIMANT.

49. A complaint made by an individual and not accompanied by a claim for civil redress shall be considered to be the simple laying of an information.

50. A complainant shall not be deemed to be a civil claimant unless he formally declares himself as such, either in the complaint itself or by some subsequent document, or, in one of these ways, claims damages.

51. The plaint or other document in which a party who alleges himself wronged claims as a civil claimant, shall be addressed to the State representative.

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52. In a case of contravention or misdemeanour, the civil claimant may by direct summons bring the case before the tribunal having jurisdiction, provided that he communicates his documents to the parquet three days before the hearing.

53. The eivil claimant shall agree to a domicile in the district where the tribunal having jurisdiction to try the case is sitting, if he does not reside in such district. In default of his doing so, all notices shall be validly served on him if left at the office of the tribunal.

54. Every person who alleges himself wronged by the commission of a crime, misdemeanour, or contravention may make a complaint thereof and claim as civil claimant at every stage of the proceedings, until the conclusion of the hearing.

55. The civil claimant may discontinue his claim at any stage of the proceedings upon payment of costs, and without prejudice to any claim for damages on the part of the accused, if any such claim is made

56. In every'case in which the " dya " or price of blood is decreed by the Shari', all claims to civil redress shall be prosecuted in accordance with that law in regard to all persons amenable thereto.

PART II.

OF INVESTIGATION BY AN EXAMINING JUDGE.

CHAPTER I.

OF THE APPOINTMENT OP AN EXAMINING JUDGE.

57. Where in a criminal case, or in a case of misdemeanour of falsification, bankruptcy, obtaining by false pretences or abuse of confidence, the parquet is of opinion that, by reason of special circumstances, the case can advantageously be investigated by an examining judge, it may at any stage of the proceedings apply to the president of the tribunal of first instance, who shall thereupon delegate a judge of that tribunal for the purpose.

58. Such judge, as soon as he has cognisance of the case, shall alone have the conduct thereof. He shall have power, when the proceedings have been commenced by a member of the parquet or any other officer of judicial police, to repeat any of the proceedings which he considers defective.

59. The accused may, at any time before he is interrogated, raise before such examining judge any plea to the jurisdiction or any objection based on the ground that the act which is the subject of the charge is not an offence in law.

60. The examining judge shall give his decision on any such question within twenty-four hours of its being raised, after consideration of the written conclusions of the State representative and after hearing the civil claimant.

61- The order of the examining judge which decides such question may be made the subject of opposition by any party within three days of service of notice thereof. Such opposition shall be made by a declaration made at the office of the tribunal, and shall be brought, at the instance of the State representative, before the tribunal of first instance sitting in chambers.

There shall be no appeal from the decision of the tribunal.

The fact that opposition has been made shall operate as a stay of the interrogation, but not of the investigation.

62. When a case is removed by the Court of Appeal, the duties of examining judge shall be undertaken by one of the members of the Court of Appeal appointed by the Court- Such judge may delegate the proceedings in the investigation to one of the judges of the tribunal in the district in which it will be necessary to hold such proceedings.

CHAPTER II.

OF EVIDENCE.

63. The examining judge shall throughout the investigation be assisted by a clerk of the court, who will sign the proces-verbaux with the judge and preserve the orders and documents.

Section I. — Of Material Evidence.

64. The examining judge shall ascertain the condition of the property or person affected by the commission of the offence, and collect all the material evidence which may lead to the discovery of the guilty party or to more complete knowledge of the act which forms the subject of the prosecution.

65. If in the process of ascertaining the facts it becomes necessary to call in the assistance of a medical or professional man, the examining judge shall be present at and supervise his proceedings.

66. If owing to the necessity of preparatory work or of repeated experiments, or for any other reason, the ascertainment of the facts cannot proceed in the presence of the examining judge, he shall issue an order specifying what facts are to be ascertained or verified and for what purpose, and shall give reasons for his decision.

67. Medical and professional men shall take an oath before the examining judge that they will give their opinion according to their honest belief, and shall make a written and signed report. Such report shall form part of the file of the proceedings for any purposes for which the law permits it to be used. %

68. The examining judge shall collect all the evidence of identity of the articles, papers, and writings which relate to the alleged offence.

He shall, if requested, and may of his own motion, proceed to the house of the accused in order to search for papers, goods, and generally all articles considered to be useful for the purpose of elucidating the truth.

69. The examining judge may also proceed to any other place which he considers likely to be the hiding place of any of the articles mentioned in the preceding article.

70. The examining judge may, by an order for which he shall give reasons, direct the seizure of all letters, missives,

newspapers, and printed matter in the hands of the Post Office, or messages in the hands of the Telegraph Department, which he considers useful for the purpose of elucidating the truth.

71. The examining judge may entrust the conduct of the search and of the other proceedings mentioned in arts. 68 and 69 to an officer of judicial police if the ascertainment

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of the facts is proceeding outside the town where the tribunal sits but in the district in which it has jurisdiction ; if it is outside the district he shall delegate the conduct of such proceedings to the chief of the parquet of the tribunal having jurisdiction in the district where such proceedings are to take place. The latter may himself in a proper case delegate an officer of judicial police for this purpose.

72. The rules laid down in the Code of Civil Procedure relative to the identification and admission by the writer of the documents produced for the purpose of comparison in a case of falsifiqation, shall apply to penal investigations.

Section II. — Evidence Given by Witnesses.

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73. The examining judge may hear any witnesses whom he thinks fit to hear as to any facts which prove or tend to prove the commission of the offence or the circumstances under which it was committed, or the guilt or innocence of the accused.

74. Any witness whose evidence the examining judge may of his own motion think it advisable to hear, shall be summoned by a bailiff or representative of public authority by virtue of an order issued by the examining judge.

The examining judge may at any time take the evidence of any witness who presents himself voluntarily, without issuing any previous summons.

75. The examining judge shall hear the evidence of any witness summoned directly by the State representative. He shall cause any witness to be summoned whose evidence the accused wishes to have taken, and shall hear any person summoned by the civil claimant.

76. Nevertheless, when any witness is summoned directly by the State representative or the civil claimant, it shall be the province of the examining judge to fix a day for hearing his evidence.

In any case, however, the examining judge shall proceed to hear the evidence of the witnesses and to hold the inquiry with as little delay as possible. He shall not have power to adjourn the hearing of the witnesses for a period of more than eight days.

77. When any witness is summoned on the application of the accused or at the request of the civil claimant, the examining judge may require the party applying to state the questions which he wishes to be put, and may, after hearing such statement, decide, by an order to that effect, that the deposition applied for shall not be taken. The party making the application may make opposition to such order before the tribunal of first instance sitting in chambers within twenty-four hours of the communication of the order to him.

78. The witnesses shall be heard separately except when confronted with each other. They shall ordinarily be heard in public ; nevertheless, the examining judge may order that they be heard in camera in the interests of justice or of morality or of the elucidation of the truth.

79. Every witness shall take an oath that he will speak the truth and nothing but the truth. Provided always that the examining judge may hear the deposition of any person who may be challenged as a witness under the provisions of the Code of Civil and Commercial Procedure without an oath being taken and by way of simple statement.

80. The examining judge shall ask each witness his surname, name, age, calling, and dwelling place.

81. The accus:d shall be present at the hearing of the evidence, and may question the witnesses either personally

or through his advocate. The State representative and the civil claimant shall also be present at the hearing of the evidence.

82. The examining judge may, if he thinks fit, hear any witness without admitting the accused, the State representative, or the civil claimant. But depositions taken

under these conditions shall only have the force of simple statements, and may only be read during the hearing after the evidence of the witnesses heard in public.

83. The answers of the witnesses and their depositions shall be taken down by the clerk of the court without any interpolation ; every erasure or cross-reference shall be approved and signed by the examining judge, the clerk of the court, and the witness.

Any interpolation and any erasure or insertion which has not been approved shall be treated as non-existent.

84. Depositions shall be signed by the examining judge, the clerk of the court, and the witness, after they have been read over to him and he has declared that he adheres to them ; if the witness refuses to sign, mention shall be made of the fact. Each page of the deposition shall be signed by the judge and the clerk.

85. Every person summoned as a witness before the examining judge h bound to obey the summons, on pain of being ordered by such judge after consideration of the conclusions of the State representative, and without appeal, to pay a fine not exceeding L.E. 1 and of being summoned again at his own expense.

If the witness doe3 not appear on a second summons, he shall be ordered to pay a fine not exceeding L.E. 4, and a warrant of apprehension may be issued against him.

86. A witness ordered to pay a fine on his first default of appearance who, after a second summons, produces before the examining judge a lawful excuse for his non-appearance, may have his fine remitted after consideration of the conclusions of the State representative.

87. A witness who appears but refuses to answer the examining judge may be ordered by him, after consideration of the conclusions of the State representative, to pay a fine not exceeding L.E. 40 or to be imprisoned for a period not exceeding fourteen days in a case of misdemeanour, and not exceeding two months in a criminal case. Such an order shall be subject to appeal before the tribunal of first instance. The appeal shall be brought by means of a declaration made at the office of such tribunal within the usual period and in the usual form.

The provisions of this article shall not apply to persons who are excused from giving evidence in the circumstances mentioned in arts. 202, 203, 204, 205, 206, and 207 of the Code of Civil and Commercial Procedure.

88. If a witness is ill or unable to attend, the examining judge shall proceed to the place where he is in order to hear his deposition. The examining judge shall give previous notice of his intention to proceed to such places to the State representative, the civil claimant, and the accused, all of whom shall have the right to be present or to be represented at the hearing of the deposition of the witness and to interrogate him as provided in the preceding articles, subject to the right of the examining judge to use the power given him by art. 82 of this Code.

89. If the witness is residing outside the district of the tribunal, the examining judge may in the event specified in the preceding article, and in any other event, delegate the hearing of the deposition to the chief of the parquet of the tribunal of the district within which the witness resides.

OF INVESTIGATION BY AN EXAMINING JUDGE. 27

90. The examining judge may also, in any event, when the witness resides within the district jof the tribunal but outside the town where it sits, and when circumstances appear to admit of such a course, delegate an officer of judicial police to hear the deposition of a witness.

91. In any case in which the examining judge delegates his powers either for the purpose of taking a step in the investigation or for the purpose of hearing the deposition of a witness, he shall specify the steps to be taken or the points as to which the deposition of the witness is to be heard.

92. Every provision of the law with reference to witnesses in a civil case shall apply in a penal case in default of provision to the contrary.

CHAPTER III.

OF PRECAUTIONARY MEASURES AGAINST THE ACCUSED.

93. When the accused does not appear in answer to a simple summons to appear, or when the offence with which he is charged comes within the category of those mentioned in art. 15 of this Code, the examining judge may issue a warrant of apprehension.

In such case the examining judge shall interrogate the accused within twenty-four hours of the execution of the warrant of apprehension at the latest.

94. After the interrogation, or in the case of the flight or non-appearance of the accused, the examining judge may, if it appears that there is a sufficient prima facie case against the accused, and that the offence charged entails the penalty of imprisonment or some more severe

penalty, either issue a warrant of arrest at once or at a later period (in which case he shall interrogate the accused within the said period of twenty-four hours), or may convert the warrant of apprehension into a warrant of arrest.

95. The warrant of apprehension shall be signed by the person issuing it, and shall bear his seal.

The accused shall be named in it as clearly as possible.

The warrant shall contain, moreover, the offence charged and an order addressed to every bailiff or representative of public authority who is entrusted with the warrant, to take all proper steps with a view to the arrest of the accused, and to bring him before the examining judge.

96. If by reason of the distance or of the hour at which the arrest is effected, the accused cannot be brought immediately before the examining judge, he shall be provisionally placed in some safe room in the prison, separately from persons already convicted or detained under a warrant of arrest.

97. Before the execution of a warrant of apprehension, the original shall be shown to the accused. The copy shall be handed to him unless he is provisionally detained in prison in accordance with the preceding article. In that case the copy shall be handed to the director of the prison, who shall sign the warrant.

98. In every case in which there is occasion for the issue of a warrant of arrest, the examining judge shall first hear the State representative, who shall make such application as he wishes after consideration of the investigation.

99. A warrant of arrest shall contain the same particulars as a warrant of apprehension ; there shall be on it an order addressed to the director of the prison bidding him receive the accused and incarcerate him.

100. The original warrant of arrest shall be shown to the accused at the time of his arrest ; the copy shall be handed to the director of the prison, who shall sign the original.

101. A warrant of apprehension or of arrest shall not be executed more than six months after its date without being re-signed by the examining judge or the chief of the parquet, either of whom shall date his signature.

102. The examining judge may at any time order that an accused person under arrest shall not be allowed to communicate with the other persons in confinement or to receive visits. Nevertheless an accused person may always communicate in private with his advocate.

103. The examining judge may at any time discharge a warrant the issue of which has been ordered by him.

Provided always that in the case of the discharge of a warrant of arrest he shall hear the State representative before doing so.

104. The accused may, at any time, apply to be released provisionally. The application shall be made to the examining judge who shall hear the accused, and the State representative, and shall give his decision after consideration of the written conclusions of the latter.

The accused shall only be set at liberty provisionally after he has agreed to a domicile in the district where the tribunal sits if he is not domiciled there already, and upon condition that he undertakes to appear at every step in the proceedings, and upon the enforcement of the judgment immediately he is summoned.

105. An order of an examining judge made in a case coming within the second paragraph of art. 103 or within art. 104 shall be subject to opposition before the tribunal of first instance sitting in chambers, whose decision shall be final. Opposition shall be brought by notice given at the office of the tribunal within a period of twenty- four hours, which shall run as against the State representative from the making of the order, and, as against the accused, from the notification to him of the making of the order.

106. An application to be released, if refused, whether after opposition made or without opposition made within the prescribed period, cannot be renewed. Nevertheless, the examining judge may at any time on the application of the accused, or of his own motion, order that the accused be released after hearing the State representative and after consideration of his conclusions.

107. A civil claimant is not entitled to apply for the arrest of the accused, and is not entitled to be heard on an application for his release.

108. In a case of misdemeanour, the accused shall be entitled, as of right, to be released eight days after his last interrogation, subject to bail being found, if he has a domicile and if he has not previously been sentenced to a term of imprisonment exceeding one year.

109. In a criminal case, provisional release shall not be a matter of right, but the examining judge shall have power to order it, subject to bail being found.

110. When a release is ordered subject to bail being found, the examining judge, or the court which hears the opposition against his order, shall fix the amount of the bail. Such bail shall, in the event of the conviction of the accused, be applied in the following order to payment of —

(1) Costs incurred by the Government ;

(2) Costs already paid by the civil claimant ;

(3) The fine inflicted.

Bail shall, moreover, comprise a sum, to be fixed by the order or the judgment, which shall be applied in the following order :

(1) In satisfaction of the judgment over and above any fine inflicted and the costs incurred before the hearing ;

(2) In satisfaction of the penalty incurred when the accused fails to appear before the judges.

OF INVESTIGATION BY AN EXAMINING JUDGE. 31

111. If the investigation is not ended within three months of the day on which the accused was arrested, the warrant of arrest shall be brought up before the tribunal of first instance, either on the report of the examining judge or on the application of the accused.

The tribunal may decide, sitting in chambers, and after hearing the State representative if need be, either to continue the investigation and extend the term of preventive arrest for a further period, or to continue the investigation and order the provisional release of the accused subject to his finding bail, or to abandon any further proceedings against him and order his unconditional release.

112. When the examining judge has ceased to have cognisance of the case, an application for release shall be made before the tribunal of first instance, which shall give its decision sitting in chambers, after hearing the State representative, and such decision shall be final.

113. In every case in which a release has been ordered, the accused may be re-arrested if the charge appears to increase in gravity. In such a case the warrant of arrest shall be issued either by the examining judge, or, if a tribunal already has cognisance of the case, by the judge or president of the tribunal, and in each case after hearing the State

representative.

114. When an accused person who has been provisionally released fails to appear after being duly summoned before the examining judge or the tribunal, as the case may be, a warrant of arrest may be issued against him, and he shall be sentenced to fine not exceeding L.E. 5.

115. In every case a person accused of an act classed as a crime who has been provisionally released, shall be arrested by virtue of the order of the examining judge, which shall commit him for trial before the criminal tribunal of fitst instance.

CHAPTER IV.

OP THE CLOSING OP THE INVESTIGATION, OP AN ORDER OP DISCHARGE, AND OP COMMITTAL FOR TRIAL.

116. If the examining judge is of opinion that the act forming the subject of the charge constitutes neither a crime nor a misdemeanour nor a contravention, he shall make an order declaring that there is no ground for further proceedings, and the accused, if under arrest, shall be immediately released. Such an order shall, within twenty-four hours after it is made, be communicated to the State representative and served on the civil claimant, both of whom may make opposition thereto in the form and within the period prescribed by arts. 122 and 124 of this Code.

117. If the examining judge is of opinion that the alleged offence only amounts to a contravention, he shall commit the accused for trial before the contraventional tribunal, and shall order his release if he is under arrest.

118. If the examining judge is of opinion that the alleged offence constitutes a misdemeanour, he shall commit the accused for trial before the correctional tribunal If in such case the misdemeanour is one which may entail the penalty of imprisonment, the accused, if he is under arrest, shall remain under arrest provisionally. If the misdemeanour cannot entail the penalty of imprisonment, the accused shall be released, without finding bail, but subject to the obligation of appearing on every application, summons, or adjournment.

119. If the examining judge is of opinion that the alleged offence should be classed as a crime, he shall commit the accused for trial before the criminal tribunal.

120. Every order of the examining judge which commits the accused for trial shall, in every case, refer to the articles of the law on which the charge is based.

121. An order committing the accused for trial shall be communicated to the State representative within twenty-four hours of its date by the examining judge, who shall at the same time send him the file of the proceedings and the incriminating documents ; notice thereof shall also be given to the accused by the clerk of the Court and served on the civil claimant, if any.

122. The State representative alone may make opposition to the committal order, and then only on a point of law. Such opposition shall be made by a notice given to the office of the tribunal within forty-eight hours of the day on which the order is communicated to him.

123. If the State representative does not make opposition, he shall summon the accused before the competent tribunal, in accordance with the terms of the committal order.

124. When the State representative makes opposition to a committal order, he shall set the tribunal of first instance in motion within the three days following the period mentioned in art. 122.

A sitting shall forthwith be held in chambers to decide on the opposition after consideration of the conclusions of the State representative and the written statements of the civil claimant and of the accused, if any are forthcoming, but none of the parties shall be present.

The decision shall be final.

125. The judge who was a member of the court sitting in chambers which heard the opposition to the committal order shall not be a member of the court which hears the case on its merits.

126. The making of opposition re-opens the whole matter. The tribunal of first instance sitting in chambers may, in a proper case, order the discharge of the proceedings.

If it does not do so it shall immediately commit the prisoner for trial before such tribunal as it considers competent.

127. An order for discharge of the proceedings, made either by the examining judge or by the court which hears the opposition, shall be no bar to a revival of proceedings if fresh evidence is produced within the period prescribed for prescription.

Fresh evidence is any statement by a witness, or a proc&s-verbal or other document, not previously submitted to the consideration of the examining judge or the court which hears the opposition, which is calculated either to strengthen the evidence which was originally held to be too weak, or to throw fresh light on the facts which will be of assistance in elucidating the truth.

PART HI.

PENAL JURISDICTIONS.

CHAPTER I.

OF THE CONTRAVENTIONAL TRIBUNAL.

128. Acts classed by law as contraventions shall be tried by the summary judge, or, in default of a summary judge, by an officer of judicial police appointed for the purpose by decree on the proposition of the Minister of Justice.

In default of a member of the parquet, the duties of the State representative before the tribunal which hears contraventions shall be fulfilled by an officer of judicial police appointed by the Public Prosecutor.

129. The judge shall take cognisance of the case either under an order of the examining judge or under an order made in chambers, or by a direct summons on the part of the State representative or the civil claimant.

130. The summons shall give one clear day's notice at least, besides the period allowed for distance ; it shall refer to the charge and the articles of the law which prescribe the penalty.

131. The judge may at any time at the request of the parties or of the State representative make an order before the hearing for any ascertainment of facts or summary investigation which requires to be carried out speedily.

132. If the person summoned does not appear, or is not

represented on the day named in the summons, he shall be tried by default.

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133. Opposition may be entered within three days of the delivery of the notice of the judgment by default, besides the period allowed for distance ; such notice may be given in the form of an extract from the judgment in a form to be settled by the Minister of Justice.

Opposition shall be entered by means of a declaration made at the office of the tribunal; it shall involve a summons to the next available sitting, and notice thereof shall be given twenty-four hours before the hearing to the civil claimant.

If the party making opposition does not appear, the opposition shall be deemed not to have been made.

Opposition by the civil claimant shall not be admissible.

134. The documents relative to the investigation shall be read by the clerk of the court with the exception of the proces-verbaux of the depositions, which may only be referred to during the hearing after the witnesses have been heard. The State representative shall make his application, and the judge shall ask the accused if he admits that he is guilty of the act with which he is charged ; if the answer is in the affirmative, the court shall decide the case without further hearing ; if the answer is in the negative, the State representative shall open the case for the prosecution, the civil claimant shall present his conclusions, and the witnesses for the prosecution shall then be heard. The witnesses shall first be examined by the State representative, then by the civil claimant, and lastly "by the accused. They may be examined a second time by the State representative and the civil claimant in order to throw light upon any facts which they may have deposed to in their answers to the questions of the accused.

1 35. After the hearing of the witnesses for the prosecution the accused shall open his defence. The witnesses for the defence shall then be called and examined first by the

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accused, next by the State representative, and lastly by the civil claimant.

The witnesses for the defence may be examined a second time by the accused in order to throw light on the facts to which they deposed in their answers to the questions of the State representative or the civil claimant. After hearing the witnesses for the defence, the State representative and the civil claimant shall be entitled to take the evidence of fresh witnesses for the prosecution or to recall the former witnesses in order to throw light upon or to verify facts deposed to by the witnesses for the defence.

136. The judge may, at any stage of the case, put or allow the parties to put to the witnesses any question which he considers to be of assistance in the elucidation of the truth.

He shall prevent the putting of irrelevant or inadmissible questions to the witnesses. He may refuse to hear the witnesses on points which he considers already sufficiently clear.

He shall protect the witnesses from any language, remark, or gesture likely to disturb or intimidate them. He shall prevent the putting of any question of an indecent or offensive nature, unless it bears directly on the facts of the case or on facts which are material to the proper appreciation of the facts of the case.

137. The accused shall not be examined except on his own application. In that case he shall be examined first by the person defending him, then by the State representative, and lastly by the civil claimant.

If, during the course of the hearing, facts are disclosed as to which some explanation on the part of the accused seems likely to be of assistance in elucidating the truth, the judge shall call his attention to them and give him an opportunity of furnishing his explanation of them.

1 38. After the hearing of the witnesses for the prosecution and for the defence, the State representative, the civil claimant, and the accused shall be allowed to address the court. The accused shall always be heard last.

The record of the proceedings at the hearing shall state that the above formalities have been complied with.

139. In a case of contravention against a police arrete, proces-verbaux drawn up by competent officers shall be received as proof of the facts until the contrary is proved.

140. Witnesses shall be summoned on the application of the civil claimant, of the State representative, or of the accused.

141. Witnesses who do not appear in answer to the summons shall, on the application of the State representative, be sentenced on their first default to a fine not exceeding 50 P.T. ; in case of a second default they may be taken into custody and sentenced to a fine not exceeding L.E. 1 or to imprisonment not exceeding three days.

142. A witness sentenced to a fine for his first default who produces a lawful excuse on the second summons, may have the fine remitted after consideration of the conclusions of the State representative.

143. Nevertheless, the judge may, at any time, if he does not consider the presence of the witness indispensable to the elucidation of the truth, proceed with the investigation in his absence upon the first default. In such a case the sentence passed on the witness may be attacked by opposition in the usual way. In any event the judgment of conviction against a witness in accordance with the two preceding articles and the following article shall be subject to appeal.

144. A witness who appears, but refuses to give evidence before the court, shall be sentenced to fine not exceeding L.E. 1 or to imprisonment not exceeding one week.

145. A witness over fourteen years of age shall take an oath to speak the truth and nothing but the truth, otherwise his evidence shall be without effect.

146. The clerk of the court shall take a note of the surname, name, calling, and domicile of the witness, and of the substance of his deposition. If the alleged offence may entail a sentence other than one of fine, damages, restitution, or costs, the clerk of the court shall take a note of the depositions which shall be approved by the judge, &nd preserved in the file of the proceedings.

147. If the alleged offence is held to be not proved, or if it does not constitute a contravention and does not prima facie amount to a misdemeanour or crime, the judge shall acquit ; he may, nevertheless, decide as to any damages claimed by the parties.

148. If there is a prima facie case of misdemeanour or crime, the judge shall decline jurisdiction and shall transmit the documents to the State representative, who shall proceed in accordance with the provisions of Chapter III. of Part I. of this Code.

149. Every judgment of conviction shall state the facts upon which the conviction is based, and shall refer to the

text of the law applied — otherwise it shall be voidable.

150. The judge shall only decide on a claim for damages which is within the jurisdiction of the summary tribunal, and not subject to appeal.

151. The judgment shall be pronounced at the time of hearing or at the next sitting at the latest.

152. The clerk of the court present at the sitting shall get the minute of the judgment signed not later than the day which follows its pronouncement.

153. Every judgment given in a case of contravention shall be subject to appeal on the part of the accused, if it includes a sentence to anything but fine, damages, restitution or costs ; it shall be subject to appeal on the part of the State representative if, in spite of his application for the purpose, the judge has not passed such other sentence.

Except in the above case no appeal shall be allowed on the part of the accused or of the State representative, except on the ground of misapplication or misinterpretation of the law.

154. The appeal shall be entered by a declaration at the office of the tribunal within the three days following the pronouncement of the judgment, in the case of a judgment in a contested case, or following the expiration of the period for opposition in the case of a judgment by default.

In the absence of provision to the contrary the appeal shall lie to the tribunal of first instance. The State representative shall give the parties three clear days' notice of the hearing. The procedure before the tribunal of first instance shall be in accordance with the rules laid down in the second section of Chapter II. of this Part.

155. Sentence to fine or costs shall be enforceable immediately notwithstanding an appeal.

The like rule shall apply in the case of sentence to imprisonment unless the accused finds bail that, if he does not appeal, he will not avoid the enforcement of the sentence at the expiration of the period allowed for appeal, and that, if he does appeal, he will appear at the hearing and will not avoid the enforcement of the judgment which may be pronounced. Every judgment sentencing to imprisonment shall fix the amount in which bail is to be found.

CHAPTER H.

OF CORRECTIONAL TRIBUNALS.

Section I. — Of the Procedure in First Instance.

156. The acts classed by law as misdemeanours shall be tried by the summary judge.

157. Th3 tribunal shall take cognisance of the case ether under an order of the examining judge or under an order made in chambers, or by a direct summons on the part of the State representative or of the civil claimant.

158. Except in a case of flagrant delict, when there shall not be any period of notice, the summons shall give three clear days' notice, besides the period allowed for distance ; it shall set out the charge and the articles of the law which

prescribe the penalty.

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159. When the accused has been brought before the tribunal in a case of flagrant delict, the tribunal shall grant him, if he asks for it, a period of at least three days in which to prepare his defence. Even in a case where the accused does not ask for an adjournment, if the judge is of opinion that the case is not ripe for judgment he shall order that the case be adjourned for further information, to one of the earliest following sittings. In such case he may keep» the accused under arrest, or may, if he thinks fit, provisionally release him either with or without bail.

160. The provisions of the first Chapter of this Part relative to the procedure at the hearing, so far as not modified by the following provisions, are applicable to cases of misdemeanour.

161. A person accused of an act punishable by imprisonment shall appear in person.

In any other case he may be represented by another, but without prejudice to the right of the judge to make an order for his appearance in person.

162. An accused person who fails to appear or to be represented in accordance with the preceding article shall be tried by default after consideration of the documents.

163. Opposition shall be admissible subject to the conditions prescribed by art. 133, and shall involve a summons to the next available sitting.

164. The judge may, in exercise of his discretionary power, order that any document which he considers material shall be read.

165. The judge, the State representative, and the parties may cause the proces-verbaux of the hearing of a witness drawn up in the course of the investigation to be read in a case in which the witness fails to appear at the hearing.

The like rule shall apply to every report by a witness or by an expert.

166. The witnesses shall be summoned by a bailiff or representative of public authority, except in a case of flagrant delict, when they may be orally required to attend by an officer of judicial police or representative of public authority. After answering to their names when called,*they shall be conducted to a room set apart for them, which they may only leave successively in order to give their evidence before the tribunal.

| A witness who has given his evidence shall not leave the court until the conclusion of the hearing, without the special authorisation of the judge.

Upon application made for the purpose an order may be made for his withdrawal while another witness is giving evidence; witnesses may be confronted with each other;

167. A witness who fails to comply with a summons before the tribunal, or, in a case of flagrant delict, with the oral requirement mentioned in art. 166, shall be sentenced, on the application of the State representative, for his first default to a fine not exceeding L.E. 20 ; in the case of a second default he may be taken into custody, and shall be sentenced to imprisonment not exceeding fourteen days or to fine not exceeding L.E. 30.

168. A witness sentenced to fine for his first default who on the second summons produces a lawful excuse, may have the fine remitted after consideration of the conclusions of the State representative.

169. A witness who appears, but refuses to give evidence before the tribunal, shall be sentenced to imprisonment not exceeding one month or to fine not exceeding L.E. 30. A person under the obligation of professional secrecy within the meaning of art. 267 of the Penal Code shall not be liable to any penalty, nor shall a person who is exempt from

the obligation of giving evidence in the circumstances mentioned in arts. 202, 203, 204, 205, 206, and 207 of the Code of Civil and Commercial Procedure.

170. The clerk of the court shall take a note of the name, surname, calling, and domicile of the witnesses as well as of their evidence, and such note shall be approved by the judge and preserved in the file of the proceedings.

171. Judgment shall be pronounced immediately if the accused is in custody, otherwise it may be adjourned to the next sitting, but shall not be further adjourned.

172. If the act alleged is held not to be proved, or if it does not constitute an offence in law, or if the period of prescription has elapsed, the judge shall acquit the accused, and may decide as to any damages claimed by the pa-ties.

173. If the act alleged is held to be proved and if it constitutes a misdemeanour, the judge shall pass sentence and decide as to the damages claimed by the civil claimant.

The like rule shall apply when the act is originally classed as a misdemeanour, but only amounts to a contravention.

174. If there is a prima facie case of crime, the judge shall decline jurisdiction and shall send the parties before the State representative, who shall take the necessary further steps in the case.

Section II. — Of Appeals in Correctional cases.

175. A judgment in a case of misdemeanour shall be subject to appeal on the part of the accused, and also on the part of the State representative in the person either of the Public Prosecutor or of one of his representatives.

176. An appeal may be entered on the part of any party answerable in damages or the civil claimant, but only to the extent of his interest, and provided that the sum claimed by the civil claimant exceeds the highest claim triable by the summary judge without appeal.

177. An appeal entered by the person convicted, a party answerable in damages, the civil claimant, or a representative of the Public Prosecutor shall be formulated within ten days at the latest, otherwise the right is lost.

Such period of ten days shall run from the date upon which judgment is pronounced, except in a case of sentence by

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default, in which case it shall only run against the accused from the day on which opposition can no longer be made.

An appeal entered by the Public Prosecutor shall be formulated within thirty days of the pronouncement of the judgment.

178. (As amended by Law No. 6 of 1905.) An appeal on the part of the accused, the civil claimant, or a representative of the Public Prosecutor shall be entered by a declaration at the office of the tribunal which gave the judgment.

An appeal on the part of the Public Prosecutor shall be entered by means of a declaration at the office of the tribunal of first instance.

179. (As amended by Law No. 6 of 1905.) The appeal shall lie to the tribunal of first instance.

180. Sentence to fine or costs shall be enforceable immediately notwithstanding an appeal. The like rule shall apply to sentences to imprisonment in a case of theft or when the accused is a vagabond or a recidivist.

In other cases of imprisonment when the accused is at liberty, the provisions of the second paragraph of art. 155 shall apply. When the accused is under preventive arrest the judge shall have power either to order that the sentence be provisionally enforced or to release the prisoner on bail in accordance with the second paragraph of art. 155.

181. If an accused person under preventive arrest is acquitted he shall be released immediately, notwithstanding any appeal.

182. (As amended by Law No. 6 of 1905.) The documents of the case shall be sent by the clerk of the court to the parquet of the tribunal which shall transmit them to the parquet attached to the tribunal of first instance.

183. (As amended by Law No. 6 of 1905.) An appeal shall be brought within thirty days before the chamber of the tribunal of first instance to which appeals in misdemeanour cases are assigned.

If the accused is under arrest he shall be transferred in

good time at the instance of the parquet to the central prison of the place where the tribunal of first instance sits.

184. (As amended by Law No. 6 of 1905.) The summons before the tribunal of first instance shall be issued on the application of the State representative attached to the tribunal, three clear days before the hearing, besides the period allowed for distance.

185. One of the members of the chamber sitting to hear the appeal shall draw up a report of the case.

After the report has been read, and before the reporter and the other members of the chamber give their opinion, the appellant shall first be heard as to his conclusions and his grounds of appeal : the other parties shall then be entitled to address the court ; the accused shall always be heard last.

186. (As amended by Law No. 6 of 1905.) The court shall always be entitled to order such supplementary investigation or such hearing of witnesses as it shall think fit. Arts. 167, 168, 169, 170 shall apply to proceedings on appeal.

No witness shall be summoned unless the court so orders.

187. (As amended by Law No. 6 of 1905.) A judgment by default pronounced on appeal may be attacked by way of opposition in the manner prescribed by art. 133.

188. Arts, 171, 172, and 173 of this Code shall apply to proceedings on appeal.

189. (As amended by Law No. 6 of 1935.) If the court is of opinion that the act charged constitutes a crime it shall order the issue of a warrant of arrest when the accused is not already in custody, and shall send the accused before the parquet. The parquet shall bring the case before the criminal tribunal if the matter has already been investigated by it or by an examining judge, and, in the contrary case, shall proceed in accordance with the provisions of Chapter III. of Part I. of this Code.

This article shall not apply to an appeal on the part of the accused alone.

CHAPTER III.

OF CRIMINAL TRIBUNALS.

Section I. — Of the Criminal Tribunal of First Instance,

190. Acts classed as crimes by the law shall be tried in first instance by the tribunal of first instance sitting as a criminal court.

191. The criminal tribunal shall take cognisance of the case either under an order of an examining judge or under an order made in chambers or by a direct summons issued by the State representative.

192. The court shall be composed of three judges other than the examining judge who had cognisance of the matter.

Sub-section 1. — Proceedings previous to the hearing.

193. The chief of the parquet attached to the tribunal shall serve on the accused :

(1) Fifteen days at least before the hearing, the indictment, drawn up and signed by the chief of the parquet or one of his representatives, setting forth the nature of the offence on which the charge is based and the facts, together with all circumstances, which may increase the penalty, and

referring to the articles of the law which the court will be asked to apply ; he shall at the same time serve the committal order if the investigation has been conducted by an examining judge ;

(2) Eight days before the hearing, the proces-verbaux, reports of experts, and depositions of witnesses, provided that an error in copying or an omission shall not invalidate the proceedings ;

(3) Three clear days in advance, the summons to appear ;

(4) Twenty-four hours in advance at least, the names of the witnesses whom the State representative intends to call.

194. The accused and the civil claimant shall also serve on one another within the twenty-four hours before the hearing, and by a bailiff, a list of their witnesses, and shall give notice thereof to the parquet by a declaration made at the office of the tribunal.

195. The witnesses shall be summoned twenty-four hours at least before the hearing, besides the period allowed for distance.

196. Unless the necessities of the case require otherwise, the documents in the file of the proceedings shall be open to inspection at the office of the tribunal by the advocates of the

parties, whenever application is made, but shall not be removed. If, when he receives the summons to appear, the accused has not selected an advocate, the president of the tribunal shall, of his own motion, appoint one for him.

Unless it is proved that the accused is without means, the advocate appointed by the president of his own motion, who has properly performed his task, may ask to be allowed his fee against the accused. Such fee shall be finally fixed by the judgment given in the proceedings.

Sub-section 2. — Procedure at the Hearing — Examination of witnesses — Judgment.

197. The accused shall be brought to the hearing unfettered, but without prejudice to any supervision which it may be necessary to exercise over him.

He shall not be removed during the course of the hearing, unless by reason of some serious disturbance caused by him.

198. He shall have the assistance .of his advocate, otherwise the proceedings are defective.

199. He shall state his names, surname, age, calling, domicile, and place of birth.

200. The clerk of the court shall read the indictment.

201. After the indictment has been read, the proceedings shall be conducted in accordance with the provisions of the first section of the second chapter of this Part, so far as they are not modified by the following provisions.

202. The State representative, the accused, or the civil claimant may, each of them so far as he is interested, object to the hearing of any witness not summoned on his application, or whose name has not been notified to him in accordance with art. 193.

203. When a witness fails to appear on a summons before a criminal tribunal, or when he does appear but refuses to give evidence, the procedure to be adopted in respect of him shall be in accordance with arts. 167, 168, and 169.

The penalty which may be imposed on a witness who fails to appear shall, in the case of his first default, be that

of fine not exceeding L.E. 40 ; in the case of a second default, it shall be that of fine not exceeding L.E. 40 or imprisonment not exceeding one month. The penalty incurred by a witness who refuses to give evidence, although he appears, shall be that of fine not exceeding L.E. 40 or imprisonment not exceeding two months.

204. The court shall proceed to consider the case immediately after the conclusion of the hearing, and shall give judgment at the same sitting.

205. The court before passing a sentence of death, shall take the opinion of the mufti of the locality, and the documents of the case shall be transmitted to him.

If the mufti does not give his opinion within seven days of the transmission of the documents to him, the tribunal shall proceed without taking such opinion.

206. If the court is of opinion that the act alleged is not proved, or that it does not constitute a crime or a misdemeanour, or that it constitutes a simple contravention, it shall acquit the accused, who shall immediately be released unless he is detained for some other cause.

The court shall decide by the same judgment as to any damages claimed by the parties.

207. If the court is of opinion that $ crime or misdemeanour has been committed, it shall impose the penalty prescribed by the law, and shall decide by the same judgment as to any damages claimed by the civil claimant.

Section II. — Of Appeal in Criminal cases.

208. An appeal against the judgment of a criminal tribunal of first instance shall lie to the Court of Appeal sitting to hear criminal cases.

209. An appeal may be brought by :

(1) The person convicted ;

(2) The party answerable in damages and the civil claimant (to the extent of their interest only) if the sum claimed by the latter exceeds the highest claim triable by the summary judge without appeal.

(3) The State representative, in the person either of

the chief of the parquet attached to the tribunal of first instance, or of the Public Prosecutor.

210. The appeal shall be brought in the manner and within the periods prescribed by arts. 177 and 178 of this Code.

211. In the case of a sentence to imprisonment, the provisions of art. 180 with reference to enforcement of the sentence shall apply.

In the case of a sentence to a more severe penalty, an appeal shall operate as a stay of execution. If the accused is at liberty, the court may order that he be kept under arrest until the appeal is heard.

212. In the case of an acquittal, the accused shall be released immediately, and notwithstanding any appeal, but subject to the obligation to appear before the Court of Appeal if occasion requires.

213. The case shall be brought before the Court of Appeal and the procedure at the hearing shall be in accordance with the rules contained in articles 182, 183, 184, 185. ^86. Articles 196, 197, 198, 199, 204, 205, 206, 207 shall also apply to cases before the Court of Appeal sitting to hear criminal cases.

214. In a case in which the Court shall think fit to hear witnesses, art. 203 shall apply, if occasion requires.

Section III. — Of Judgments pronounced in Contumacy.

215. When the accused has not been arrested, or has escaped before his appearance before the criminal tribunal of first instance, he shall be tried in contumacy by such tribunal, if he fails to surrender before the hearing.

216. Eight days before the hearing, the summons shall, by direction of the State representative, be affixed to the door of the audience chamber of the criminal tribunal, and inserted in the Official Journal.

Such affixing and insertion shall be equivalent to service of the summons.

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217. No person may appear before the court to defend or represent an accused person who is in contumacy. Provided that if the accused is outside the territory of Egypt,

or if he raises the point that it is physically impossible for him to come to the hearing, a representative may put forward his excuse and argue in support of its lawfulness. If the court admits the lawfulness of the excuse, it shall order an adjournment of the trial, and fix a day for the appearance of the accused before it.

218. The indictment shall be read and the proces-verbaux certifying that the notices provided for by art. 216 have been given within the period prescribed by law. The State representative shall apply for the infliction of the penalty, and the civil claimant shall present his conclusions. The court after deliberation and after consideration of the documents furnished during the investigation, shall give judgment on the charge and shall decide, if occasion requires, as to the damages.

219. In a case of conviction in contumacy, the civil claimant who recovers damages shall be required to give I security, upon giving which he may proceed to enforce the judgment, to the extent of his interest therein.

220. The security shall only be available for a period of five years from the date of the judgment in contumacy.

221. When the person in contumacy appears, or is arrested during the period of five years prescribed by the preceding article, the question of damages shall be decided afresh.

When the former judgment has been enforced, the Court may, if occasion requires, order the restitution, either in whole or in part, of the sum recovered.

222. If the person in contumacy dies during the said period of five years, and the amount of the damages is still unassessed, the assessment thereof shall take place in the presence of the heirs ; if the damages have already been paid, the heirs shall be entitled to claim any such rectification or repayment as is mentioned in the preceding article.

223. If after the expiration of the above-mentioned period of five years, the person in contumacy dies, or if, after he has appeared or been arrested he is again convicted, the former judgment can not be attacked thereafter as regards the damages, and the assessment thereof, if it has taken place ,is final.

If the person in contumacy is acquitted, the damages cannot be reclaimed if they have already been paid. But if they remain unpaid either in whole or in part the person in contumacy shall no longer be liable to any payment.

224. When the person convicted in contumacy appears or is arrested before his penalty is barred by prescription, the conviction is annulled by operation of law, and the case shall proceed before the tribunal as if it had not yet been tried.

225. Under no circumstances shall the absence of one of the persons accused in a case operate to arrest the trial of such case as regards the other persons accused.

226. Judgments given in contumacy by the criminal tribunal shall not be subject to appeal

227. All the provisions of this section shall, in the case of an appeal brought before the Court of Appeal by the State representative, apply to an accused person who escapes before the hearing of the appeal, after having been convicted in his presence by the criminal tribunal of first instance.

The said provisions shall apply also in the same case, with the exception of arts. 215 and 216, to an accused person who fails to appear before the Court of Appeal, after having been releaszd under art. 212.

228. Every judgment pronounced in a case of contumacy shall, at the instance of the State representative, be affixed to the door of the audience chamber of the criminal tribunal, or of the Court of Appeal and inserted in the Official Journal,

CHAPTER IV.

OF SPECIAL METHODS OF ATTACKING JUDGMENTS.

229. (As amended by Law No. 6 of 1905.) The State iep:es3ntative and the person convicted, as also the party liable in damages and the civil claimant (but only to the extent of their interests), may move the Court of Appeal, sitting as a Court of Cassation, to discharge judgments from which there is no appeal, pronounced in a case of crime or misdemeanour in any of the three following cases :

(1) If the facts as found by the judgment do not constitute an offence in law ; or

(2) If the law has been wrongly applied to the facts found by the judgment ; or

(3) If there is a substantial defect in the procedure or in the judgment.

Every judgment carries with it the presumption that the forms which are of substance or which are prescribed on pain of invalidating the proceedings, have been observed in the course of the proceedings. Provided that when neither the record of the hearing nor the judgment make any mention of such forms, it shall be open to the party concerned to prove by any lawful means that they have in fact been omitted or violated.

230. The State representative and the civil claimant shall alone have such power, so far as regards their respective interests in the case of a judgment pronounced in a case of contumacy.

231. The motion shall be entered by a declaration made at the office of the Court within eighteen clear days following the pronouncement of the judgment.

The reasons for the appeal must be presented within that period, otherwise the right is lost.

No reasons other than those produced within the said period may be adduced before the Court.

The office of the Court shall send to the interested party, on his application, an extract from the judgment within eight days of its pronouncement.

The accused or the convicted person shall be summoned by direction of the State representative, three clear days before the hearing.

In default of the presentation of reasons within the proper period, or if the applicant only raises questions of fact which concern the merits of the case, the motion shall be declared inadmissible on the application of the State representative and without any hearing.

The motion shall not operate as a stay of execution except in the case of a death sentence.

232. (As amended by Law No. 6 of 1905.) The Court shall, in a proper case, decide on the motion after hearing the State representative and the parties or their representatives.

In the first of the cases mentioned in art. 229, the Court shall acquit the accused ; in the second of such cases, it shall apply the law ; in the third case, it shall remit the case to the tribunal which has pronounced the judgment in respect of which the motion is made. In this last case no

member of such tribunal who has been a party to the decision annulled, may sit when the case is re-heard.

In the event of a second resort to the Court of Cassation in the same case, the Court shall decide finally on the merits, if the motion is allowed.

233. The State representative and the parties concerned may, at any time, apply to the Court of Appeal, sitting as a Court of Cassation, for the annulment of two judgments convicting persons accused of the same act, if the two convictions are so absolutely inconsistent that one affords proof of the innocence of the persons convicted by the other. Such an application shall operate as a stay of execution.

The Court if it grants such application shall remit the case to a new tribunal which shall be mentioned in its judgment.

A person convicted and subsequently deceased shall be represented, either by his heirs or by a guardian of his reputation appointed by the Court sitting in cassation upon application made to it.

234. The like motion shall lie if, in a case of conviction for homicide, the person supposed to have been killed is discovered again, or if one or more of the witnesses for the prosecution are convicted of false evidence — provided that in the latter case the Court of Appeal sitting as a Court of Cassation is of opinion that the false evidence may have influenced the decision of the judge.

CHAPTER

PROVISIONS APPLICABLE TO ALL PENAL TRIBUNALS.

235. All sittings shall be public, otherwise the proceedings are defective : nevertheless, . the court may, in the interests of public morality and decency, order a sitting in camera during the whole or part of the hearing.

236. Any defect in the proceedings which occurred before the hearing shall be brought to. the notice of the court before the hearing of the first witness, or before the pleadings if there are no witnesses, otherwise the objection cannot be raised.

A committal order cannot be attacked before the tribunal which decides on the merits, but this shall be without prejudice to the right of the accused to argue that the act in respect of which the committal order was made does not

constitute a punishable offence.

237. Any misdemeanour or contravention committed at the hearing shall be tried at the same sitting, the State representative being heard.

In case of the commission of a crime, the case shall be ordered to be sent to the parquet.

In any case the judge or the president shall draw up a proces- verbal which shall be signed by the clerk of the court, and shall, in a proper case, cause the accused to be arrested.

238. The parties liable civilly shall be summoned with the same length of notice as the accused.

They shall, in a proper case, be condemned in costs, even as against the State, and in damages, but shall not be sentenced to fine.

239. No person who has made a claim before a civil or commercial tribunal may set a penal tribunal in motion in respect of the same cause of action by appearing as civil claimant.

240. Incidental questions arising during the hearing shall be decided at the sitting after hearing the State repre- sentative.

241. When a prosecution has been brought before two or more summary judges, members of the same tribunal of first instance, the question of what judge shall try the case shall be brought before such tribunal; if the prosecution has been brought before two or more summary judges, members of different tribunals, or before two or more ex- amining judges or two or more tribunals of first instance, the question of what judge shall try the case shall be brought before the Court of Appeal.

CHAPTER VI

OP JUVENILE OFFENDERS..

242. An accused person who has completed his seventh but not completed his fifteenth year and is prosecuted for a crime, shall be tried by the correctional tribunal if no other person more than fifteen years of age is put on his trial at the same time for the commission of the same crime, either as principal or as accessory.

243. Sentence of corporal punishment passed on a juvenile offender is not subject to appeal on the part of the person sentenced.

244. Corporal punishment shall be inflicted in the prison by virtue of a written order of the parquet. The director and the doctor of the prison, shall be present at its infliction.

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245. A juvenile offender placed in a reformatory school or other like establishment shall be detained there by virtue of a warrant issued by the parquet, the form of which shall be approved by the Minister of Justice. Pending his transfer he may be provisionally detained in the prison.

246. Sentence to restitution, damages or costs shall not be enforced by detention of the person as against an accused person who has not completed his fifteenth year.

CHAPTER VII.

OP ACCUSED PERSONS OF UNSOUND MIND.

247. When an accused person is incapable of presenting his defence by reason of his being in a state of mental infirmity, he shall not be put on his trial until he shall have recovered his reason sufficiently to enable him to defend himself.

If such incapacity is proved before the court, the trial shall be suspended for the like period.

248. In either of the cases mentioned in the preceding article, or when an accused person is acquitted under the provisions of paragraph 1 of art. 57 of the Penal Code by reason of his being in a state of mental infirmity, and when the mental condition of the accused appears to be such as to justify his transfer to an establishment for persons of unsound mind, the parquet shall set the administrative authorities in motion, and they shall take the necessary steps. The like rule shall apply when the parquet is of opinion that no further proceedings should be taken against an accused person by reason of his being in a state of mental infirmity.

249. In all the above-mentioned cases, if the accused is ^ under preventive arrest, the parquet may, with the authorisa-

tion of the tribunal in which the case is proceeding or of the summary judge, place the accused in an establishment for persons of unsound mind or in a Government hospital, pending the decision of the administrative authorities.

CHAPTER VIII.

OP COSTS.

250. Every accused person found guilty of an offence may be sentenced to pay the whole or a part of the costs.

251. A person convicted in default of appearance who has been acquitted on opposition made by him, may be sentenced to pay the whole or a part of the costs of the proceedings and of the judgment in default of appearance.

252. When a judgment has been affirmed on appeal, the accused person may be sentenced to pay the whole or a part of the costs of such appeal, unless it was brought by the parquet alone.

253. When two or more accused persons are sentenced by the same judgment for the same offence, either as principals or as accessories, they may be jointly and severally sentenced to pay the costs or the costs may be apportioned amongst them.

254. When an accused person is only sentenced to pay a part of the costs, the amount which he is to pay shall be assessed by the judgment.

255. Every person appearing as a civil claimant shall be liable to the State for the costs of the proceedings, the amount thereof and the method of recovering the same being regulated by the tariff of judicial costs.

256. If the accused is found guilty, he shall be condemned to repay to the civil claimant the costs incurred by him. Provided always that the costs occasioned by the intervention of the civil claimant shall remain chargeable against him whenever he has failed to obtain damages. When only a part of his claim has been allowed, such costs may be divided fn such proportion as may be determined by the judgment.

257. When the accused is acquitted but is condemned to pay damages to the civil claimant, the costs which the accused is condemned to pay to the civil claimant shall be ascertained in accordance with the regulations applicable to civil and commercial cases.

PART IV.

OF THE ENFORCEMENT OF SENTENCES.

258. When a sentence of death has become final, the file of the proceedings shall be immediately transmitted by the Minister of Justice to the Khedive.

If the penalty is not commuted within a period of fourteen days, the sentence shall be enforced.

259. A person condemned to death whose sentence is final shall be kept in prison until the enforcement or commutation of the penalty, under a warrant issued by the parquet the form of which shall be approved by the Minister of Justice.

260. An execution shall be carried out under the direction of the Minister of the Interior on the written application of the Public Prosecutor, stating that the formalities prescribed by art. 258 have been complied with.

261. An execution shall not take place on a holiday which is peculiar to the religion to which the condemned man belongs, nor on a national holiday.

262. The body of the person executed shall be buried by, and at the expense of, the State, if he has no heirs to arrange for its burial.

The burial shall, in any case, be carried out without any ceremony.

263. If a woman who has been sentenced to death states that she is with child, execution shall be stayed, and, if her statement is found to be true, the execution shall not be carried out until after she has been delivered of the child.

264. Every sentence to a penalty restrictive of liberty shall be enforced by virtue of a warrant issued by the parquet whose form shall be approved by the Minister of Justice.

265. When the amount due to the State by way of fine, restitution, damages and costs has been assessed, the

parquet shall notify the person sentenced of the amount due ; if the person sentenced is in custody the notification shall be effected through the agency of the director of the prison.

266. When the sum due to the State has been assessed by the judgment of conviction, the pronouncement of such judgment in the presence of the accused shall be equivalent to such notification as aforesaid.

267. Enforcement of pecuniary penalties payable to the State may be carried out by means of detention of the person.

Such detention shall take the form of simple imprisonment for three days for the first sum of P.T. 20, or for any less sum, and thereafter one day for every additional sum of P.T. 10 or fraction thereof : provided that the total duration of such imprisonment shall not exceed fourteen days in a case of contravention nor ninety days in a case of crime or misdemeanour.

26S. Detention of the person shall be by virtue of a warrant issued by the parquet, the form of which shall be approved by the Minister of Justice. It may commence at any time after notification of the amount due, but only after the expiration of all penalties restrictive of liberty to which the accused has been sentenced.

269. Detention of the person shall, by operation of law, cease to be enforced as soon as the equivalent of the detention

undergone, calculated in accordance with the provisions of art. 267, shall equal the total sum originally due, after deducting the amount paid by the person sentenced or recovered for the State by means of execution levied on his goods.

270. Detention of the person shall not operate as a discharge from payment of costs, restitution, or damages. It operates to discharge the person who has undergone it from fine up to the amount of P.T. 20 for the first period of three days and of P.T. 10 for every additional day.

271. Every person liable to undergo detention of the person may, by notice given to the parquet at any time before the warrant for the enforcement of the detention has been issued, declare his option to undertake some manual or industrial labour instead of being incarcerated in order to undergo detention of the person.

272 The person sentenced shall be employed at such labour without remuneration, in the service of some Government or municipal Department, during such number of days

as shall be equal to the duration of the detention which he is liable to undergo. The different kinds of labour at which the person sentenced may be employed, and the administrative authorities who are to regulate such labour, shall be determined by an arrete issued by the Minister of the Interior in agreement with the Minister of Justice.

The person sentenced shall not be employed at such labour outside the town or markaz to which he belongs.

The daily task imposed on him shall be such as, having regard to his physical capacity, he can complete by six hours of labour.

273. A person sentenced taking advantage of the provisions of art. 271 who fails to present himself in order to

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do the labour appointed for him, absents himself from his labour or fails to accomplish his day's task, without some cause which in the opinion of the administrative authorities is reasonable, shall be sent to prison to undergo the detention to which he is liable, after deducting the days on which he has completed his daily task.

In the event of there being no labour at which the person sentenced may usefully be employed, he shall undergo detention of the person notwithstanding his option to work.

274. The sum due to the State either by way of fine or by way of restitution, damages, or costs shall be reduced by P.T. 20 for the first three days on which the daily task has been wholly completed, and by P.T. 10 for every additional day.

275- When sentences to fine, restitution, damages and costs have been pronounced concurrently, the amo'unt produced by the enforcement of such sentences against the goods of the person sentenced shall, if insufficient, be distributed amongst the various parties entitled thereto in the following order :

(1) Costs due to the State ;

(2) Amounts due to the civil claimant ;

(3) Fine and restitution payable to the State.

PART V.

OF PRESCRIPTION.

276. A penalty imposed for a crime shall, with the exception of the penalty 'of death, be barred by prescription by the lapse of twenty years according to the Arab calendar, commencing from the judgment by which sentence is passed.

The penalty of death shall, in like manner, be barred by prescription by the lapse of thirty years.

277. A penalty imposed for a misdemeanour shall be barred by prescription by the lapse of five years commencing from the day on which the judgment can no longer be attacked by way of opposition or appeal, or, if there has been opposition or appeal, commencing from the day on which a sentence from which there is no appeal was passed.

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278. A penalty imposed for a contravention shall be barred by prescription by the lapse of one year, commencing as provided in the preceding article, unless the judgment is one from which there is no appeal, in which case time shall run from the date of the judgment.

279. Proceedings by the State representative shall be barred by prescription in a criminal case by the lapse of ten years from the date of the commission of the crime or of the last proceeding in the investigation; in a case of misdemeanour by the lapse of three years ; in a case of contravention by the lapse of six months.

280. Proceedings in the investigation interrupt the running of the period of prescription, even in regard to persons not concerned in such proceedings.

281. The fact that a penalty is barred by prescription enders the judgment of conviction final.

Consequently, a person convicted in default of appearance or in contumacy, whose penalty is barred by prescription, shall in no case be allowed to appear with a view to purging his default or contumacy.

282. An action for damages entirely founded on the commission of a crime, misdemeanour, or contravention cannot be brought before a penal tribunal after the proceedings by the State representative have been barred by prescription. If it is brought before a penal tribunal within the period of prescription, it interrupts the running of the period of prescription against proceedings by the State representative.

LAW CONSTITUTING MARKAZ TRIBUNALS

THE LAW CONSTITUTING MARKAZ TRIBUNALS.

LAW No. 8, 1904.

We, Khedive of Egypt,

Having taken into consideration the decree reorganising the Native Tribunals dated the 14th of June 1883 ;

Having taken into consideration the Penal Code and the Code of Criminal Procedure promulgated by decrees of this date ;

On the proposition of our Minister of Justice, and with the approbation of our Council of Ministers ;

Having heard the Legislative Council,

Hereby decree as follows : —

CONSTITUTION OF MARKAZ TRIBUNALS.

1. Tribunals called "Markaz Tribunals" may be established by Order of the Minister of Justice in agreement with the Minister of the Interior.

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2. The area of jurisdiction of each Markaz tribunal is fixed by an Order of the Minister of Justice.

The tribunal is served' by the judge of the Summary Tribunal of the locality or by a judge of the tribunal of first instance specially delegated for the purpose by the Minister of Justice.

PENAL JURISDICTION.

3. (As amended by Law No. 6 of 1907.) A Markaz tribunal shall be competent to take cognisance of all contraventions and also of all the misdemeanours mentioned in the Schedule to this law.

As regards contraventions which cannot entail a sentence other than imprisonment, fine, damages or costs, it shall

have exclusive jurisdiction ; it shall have concurrent jurisdiction with the Summary Judge as regards other contraventions, as well as regards the misdemeanours mentioned in the preceding paragraph.

With respect to offences within its jurisdiction, the Markaz tribunal shall have all the powers of a Summary Judge, save that it cannot sentence to imprisonment for a period exceeding three months nor to fine exceeding L.E.10 whatever may be the maximum penalty prescribed by law.

4. With respect to offences over which both the Summary tribunal and the Markaz tribunal have jurisdiction, the Minister of Justice shall, by means of instructions given to the parquet and communicated to the tribunals, lay down the principles in accordance with which offences shall be ordinarily brought before one or the other of such tribunals.

5. (As amended by Law No. 9 of 1906.) With respect to matters within the jurisdiction of Markaz tribunals, the powers of the State representative both as regards investigation, prosecution and application, and as regards the enforcement of judgments and the right of appeal, may be exercised by officers of judicial police appointed for the purpose by the Minister of Justice.

Provided that such officers shall not have power to make a search nor to effect seizures in virtue of paragraphs (6) and (c) of art. 30 of the Code of Criminal Procedure, nor to issue warrants of arrest. Moreover, an order for filing made by one of such officers shall be no bar to the revival of the matter by the parquet nor to a direct summons on the part of the civil claimant.

6. When an officer of judicial police acting in virtue of the preceding article, is of opinion that, in accordance with instructions issued as provided in art. 4, a matter should not be brought before the Markaz tribunal, he shall place it

in the hands of the parquet, who shall either bring it before

the summary tribunal or shall instruct the police officer to bring it before the Markaz tribunal.

The parquet may, of its own motion and at any stage of the proceedings, take into its own hands a matter which is in the hands of the police.

7. The parquet when it has in its hands a matter which appears to be suitable for trial before a Markaz tribunal, may transmit it at any stage of the proceedings to one of the officers of judicial police who is entrusted with the powers of the State representative before the Markaz tribunals.

8. The Markaz tribunal shall remit any matter of which it has cognisance, to the parquet, with a view to the proper further proceedings, when it is of opinion —

(i) That by reason of the gravity of the offence the penalties which it is competent to impose are insufficient ; or

(ii) That according to the provisions of this law or of instructions issued as provided by art. 4, the matter is one which should be brought before the Summary tribunal ; or

(iii) That it is a proper case for investigation by the parquet.

9. Arts. 141, 142, 144 of the Code of Criminal Procedure shall apply, even in a case of misdemeanour, to witnesses who fail to appear before a Markaz tribunal or who appear and refuse to give evidence.

10. The Minister of Justice may, by order, provide that the rules of the Code of Criminal Procedure relative to the keeping of a written record of the proceedings and especially to the recording of the depositions of the witnesses, shall only apply before Markaz tribunals with such modifications as he shall think fit, save as regards the provisions of art. 149 of the said Code.

CIVIL AND COMMERCIAL JURISDICTION.

11. The Minister of Justice may, by Order, confer on all the Markaz tribunals or on some of them, jurisdiction in civil and commercial matters ; such jurisdiction shall, as regards the amount of the claim, not exceed that of the summary judge from which there is no appeal.

GENERAL PROVISIONS.

12. In every locality in which a summary tribunal sits, the Minister of Justice may, insted of establishing a separate tribunal, order that penal matters which are triable before a Markaz tribunal, shall be entered on a special list.

The provisions of this law shall apply to the investigation, trial and remitting of matters entered on such list and also to the execution of the judgments, in the same manner as if they were matters entered on the list of a Markaz tribunal.

13. The duties of clerks of the court and of bailiffs of the Markaz tribunals shall, in penal matters, be undertaken by officials appointed for the purpose by the Minister of Justice in agreement with the Minister of Interior.

14. The officers of judicial police delegated in accordance with art. 5 shall, as regards the powers conferred on them by this law, be subject to the supervision of the parquet.

15. The Ministers of the Interior and of Justice are charged each so far as he is concerned therein, with the execution of this law, which shall come into force on the 15th of April 1904.

Done at Abdin Palace the 27th day of Zilkadeh 1321 (14th February 1904).

ABBAS HILMI.
Signed by^the Khedive,

MUSTAPHA FBHMY,

President of the Council of Ministers,

Minister of the Interior.

Ibrahim Fouad,

Minister of Justice.

SCHEDULE.

(As amended by Law No. 6 of 1907.)

Article of the Penal Code.

Indignity offered to public servant 117, § 1

Attack on or resistance to a public servant. . .118
Attack on or resistance to a public servant. . . 119, § 1

Damage to monuments, etc 140

Blows 206

Wounds caused by carelessness 208

Public offence against decency 240

Defamation (when the imputation made is not of a

crime or misdemeanour) . 262

Insults 265

Thefts of articles whose value does not exceed

P.T.25 274,275

Gaming houses 307

Destruction of agricultural implements, etc. . . 309
Poisoning of domestic animals 312

Destruction of enclosures, etc 313

Fire caused by negligence 315

Trespass 323

Trespass 324

Trespass 325

Offences committed at a trial

Offences against the law of vagrancy ....

LAW CONSTITUTING COURTS OF ASSIZE.

THE LAW CONSTITUTING COURTS OF ASSIZE.

LAW No. 4, 1905.

We, Khedive op Egypt,

Having taken into consideration the Khedivial Decree dated the 14th of June 1883 reorganising the Native Tribunals ;

Having taken into consideration the Code of Criminal Procedure ;

On the proposition of our Minister of Justice and with

the approbation of our Council of Ministers ;

Having heard the Legislative Council,

Hereby decree as follows : —

CHAPTER I.

JURISDICTION. — ORGANISATION.

1. Subject to art. 55, acts classed bylaw as crimes shall be tried by Courts of Assize, except crimes the cognisance of which is entrusted to a special tribunal.

2. Assizes shall be held in each locality in which a tribunal of first instance has been established.

The area of jurisdiction of each Court of Assize shall be that of the tribunal of first instance of the place where the court is sitting.

3. A Court of Assize shall, subject to the provisions of the following article, be composed of three judges of the Court of Appeal.

4. The judges of the Court of Appeal entrusted with the service of the Courts of Assize shall be appointed by the Minister of Justice, on the proposition of the president of the Court of Appeal.

The distribution of this service among the judges thus appointed shall be effected in the same manner, regard being had to the principle of rotation.

All the judges of the Court of Appeal shall be available without distinction for the Court of Assize of Cairo.

If one of the judges appointed for a particular session is unable to attend, he shall be replaced by another judge qualified to serve on the Courts of Assize appointed by the president of the Court of Appeal, or, in an urgent case, by a judge of the tribunal of first instance of the district, selected by the president of the Court of Assize in agreement with the president of the tribunal.

CHAPTER II.

SESSIONS OF THE COURT OF ASSIZE.

5. The Courts of Assize shall be assembled each month unless the Minister of Justice decides otherwise.

The Minister may oider the holding of extraordinary

sessions.

6. The date of the opening of each session shall be fixed at least one month in advance, by an order of the Minister of Justice issued on the proposition of the president of the Court of Appeal and published in the Official Journal.

7. The list for the session shall be prepared in accordance with arts. 22 and 24.

8. Unles3 prevented from so doing, the court shall sit from day to day until the list of the session is cleared.

CHAPTER III.

OF COMMITTAL FOR TRIAL BEFORE THE COURT OF ASSIZE.
OF ORDERS OF THE COMMITTING JUDGE.

9. Every criminal matter investigated by the parquet shall be examined by a committing judge before it is brought before the Court of Assize.

For this purpose one or more committing judges shall be appointed in each tribunal of first instance by order of the Minister of Justice. Such judges may move their sittings from place to place according to the requirements of their service.

10. Cases shall be brought before the committing judge by means of a document drawn up by the parquet stating concisely the acts with which the accused is charged or with which each of the accused is charged, if there are more than one, and the offence constituted by such acts.

Such document shall be accompanied by a list of the witnesses for the prosecution with a concise statement of the facts to which each of them may be called on to depose.

A copy of such document and of the list accompanying it shall be served on each of the accused.

11. The committing judge, when the case has thus been brought before him, shall give his decision after consideration of the documents, and after hearing the explanations which he thinks proper to ask of the State representative, the accused or his advocate. The parties shall be informed, three days at least in advance, of the date fixed for the examination of the matter. The order of the committing judge shall be made within eight days of the communication of the documents to him.

12. If the committing judge is of opinion that there is a prima facie case of crime and the evidence produced appears

to him to be sufficient, he shall make an order committing for trial before the Court of Assize in the form prescribed by Chapter IV.

If he is of opinion that there is a prima facie case of misdemeanour or of contravention, he shall remit the case to the parquet to be dealt with according to law.

Provided that if a misdemeanour is committed in connection with a crime, he shall have power by the same order

as that which deals with the crime to order that the misdemeanour be sent for trial before the Court of Assize.

If the committing judge sees no trace of an offence or if he does not find sufficient evidence of guilt, he shall make an order of discharge and order the release of the accused if he is not detained for some other cause.

He may, if he thinks fit, send the case back to the parquet for additional investigation, specifying the points with which this investigation should deal ; he may also hold an additional investigation himself.

13. The Public Prosecutor may move the Court of Appeal, sitting as a Court of Cassation, to quash an order of discharge made by a committing judge, or an order of such judge remitting the case to the parquet on the ground that the facts brought out against the accused only constitute a misdemeanour or contravention, but only in a case of improper application or interpretation of the law.

The motion shall be entered by a declaration made at the office of the tribunal within eighteen clear days of the date of the order.

It shall be heard as an urgent matter. The accused shall be summoned at the instance of the State representative three clear days before the hearing.

14. The Court shall decide on the motion, after hearing the State representative and the accused or his advocate.

If the motion is allowed, the Court shall send the case back to the committing judge, indicating the offence constituted by the facts of the case.

15. Subject to the provisions of arts. 13 and 14, orders of a committing judge shall be final.

Nevertheless, an order of discharge founded on the insufficiency of proof of guilt shall be no bar to the revival of the proceedings if, within the period of prescription, fresh evidence within the meaning of art. 127 of the Code of Criminal Procedure is produced.

OF PREVENTIVE ARREST.

16. As soon as the committing judge has cognisance of a case he alone shall be competent to decide as to preventive arrest. For this purpose he may at any moment order the arrest of an accused person who has not been arrested or who has been released on bail. He may also order that an accused person under arrest be released on bail.

OF WITNESSES.

17. When the committing judge makes a committal order he shall call upon the accused or his advocate to produce, at the sitting, the list of the witnesses whom he wishes to be heard before the Court of Assize.

Unless the committing judge is of opinion, after hearing the statements of the accused or his advocate, that the summoning of the witnesses has been applied for with a purpose which is dilatory or merely vexatious, he shall order such witnesses to be summoned before the Court of Assize at the instance of the State representative.

The committing judge shall have power on the application of the accused to make subsequent additions to the list thus drawn up. The State representative shall be informed of the application to summon fresh witnesses three days at least before the decision is pronounced.

18. The witnesses for the defence whose names do not appear on the list mentioned in the preceding article shall be summoned by a bailiff at the instance of the accused, their travelling expenses being deposited at the office of the tribunal.

19. The accused and the civil claimant shall serve on each other, three days at least before the hearing and by a bailiff, a list of the witnesses summoned by them, and shall give notice of this list to the State representative by a declaration at the office of the tribunal.

20. The names of the witnesses for the prosecution which are not entered on the list mentioned in art. 10 shall be served on the accused by the State representative three days at least before the hearing.

21. The witnesses shall be summoned three days at least before the hearing besides the period allowed for distance.

The summons to appear as a witness before the Court of Assize at a particular sitting imports an obligation for the witness to be present at every subsequent sitting of the same session at which the case may be called on.

OF THE FIXING OF THE SESSION.

22. When the committing judge makes an order committing for trial before the Court of Assize, he shall fix the session of such court at which the case shall be entered, having regard to the instructions on this subject given by the president of the tribunal of first instance.

At the same time he shall, if the accused or his advocate apply for it, fix a period, not exceeding ten days, during which the file of the proceedings shall lie at the office of the tribunal open to the inspection of the advocate of the accused, who may make himself acquainted with its contents, but may not remove it.

A copy of the committal order shall be served on the accused within three days of its pronouncement.

23. If at the moment of the making of the committal order the date of the opening of the session of the Court of Assize has not been fixed, such date shall be notified to the accused eight clear days in advance.

24. The file of every case in which a committal order has been made shall be forwarded, in good time, by direction of the committing judge, to the president of the tribunal of first instance, whose duty it shall be to bring it to the notice

of the judges appointed to sit at the session of the Court of Assize at which the case is entered.

It shall be the'duty of the president of the tribunal of first instance to prepare the list of each session of the Court of Assize after taking the opinion of the committing judges.

OF ADVOCATES FOR THE DEFENCE.

25. The president of the tribunal of first instance shall,, when the file of the proceedings have been forwarded to him>

in accordance with art. 24, appoint, of his own motion, an advocate to d fend any accused person who has not selected an advocate to defend him.

26. Any reason for being excused or for inability to act which the advocate appointed by the president of his own motion may have to urge, shall be put forward by him without delay before the president of the tribunal of first instance. If such reason arises after the opening of the session it shall be submitted to the president of the Court of Assize.

In the event of such reason being held valid, the president of the tribunal or the president of the Court of Assize shall appoint another advocate.

Except in cases where an excuse or inability to act has been properly established, the advocate appointed by the president of his own motion shall assist his client at the hearing or send a substitute under penalty of being sentenced by the Court of Assize to a fine not exceeding L.E.50, without prejudice to disciplinary proceedings if the case so requires.

The court may remit the penalty if the advocate proves

that it was impossible for him to attend the hearing.

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27. Unless it is proved that the accused is without means the advocate appointed by the president of his own motion, who has properly performed his task, may ask to be allowed his fees against the accused. Such fee shall be finally fixed by the judgment^given in the proceedings.

28. The advocates entitled to plead before the Court of Appeal or before the tribunal of first instance of the locality, shall alone be competent to plead before a Court of Assize.

OF MATTERS INVESTIGATED BY AN EXAMINING JUDGE.

29. When an examining judge is of opinion, as the result of an investigation conducted by him, that a case of crime has been sufficiently proved against one or more persons, he shall make an order committing the case for trial before the Court of Assize, in accordance with the provisions of this chapter relative to the committing judge, instead of proceeding in accordance with the provisions of Chapter IV. of Part V. of the Code of Criminal Procedure.

CHAPTER IV.

OF COMMITTAL ORDERS.

30. A committal order shall set out the facts forming the grounds of the accusation with all the details necessary for bringing to the knowledge of the accused the substantial facts of the charge in regard to the date and place of the offence, the person against whom and the manner in which it was committed or the thing in respect of which it was committed, as well as all the circumstances which are such as to increase the gravity of the charge.

The order shall describe the offence either by giving it its specific title, or by mentioning its constituent elements and their application to the facts, and shall specify the article of the law the application which will be asked for.

31. A separate committal order shall be made in respect of each offence charged against the same person, subject to the provisions of the four following articles.

32. When the facts alleged are connected with one another so as to form a single transaction, all offences which this

combination of facts or one or more of them constitutes may be charged against the accused by one and the same committal order.

33. When there is a doubt as to the proper description of the offence constituted by the facts alleged, every offence which the facts are capable of constituting may be charged against the accused by one and the same committal order ; they may also be charged against him alternatively.

34. When a person is accused of the commission of several ofEences of the same description, the last being committed within a year of the date of the first, all such ofEences may be charged by one and the same committal order.

35. When the facts alleged are connected with one another so as to form a single transaction and several persons are accused of taking part in such transactions, a single committal order may be made against all such persons, although the facts alleged against each of them constitute different ofEences.

36. The Court of Assize may, at any time before pronouncing judgment, correct any material error or supplement any omission in the wording of the charge contained in the committal order.

37. The Court of Assize may, in a proper case, modify or increase the gravity of the charge contained in the committal order at any time before judgment is pronounced, but so nevertheless that it does not include in the accusation facts

which have not been dealt with in the investigation.

38. If the errors or omissions in the committal order which the Court has remedied in virtue of art. 36 were such as to mislead the accused or to cause prejudice to his defence,

the Court shall either adjourn the case to a subsequent sitting or order that the accused shall be put on his trial at the next session of the Assizes.

The same rule shall apply on every occasion on which the Court amends the charge in virtue of art. 37, when the amendments are such as to prejudice the defence of the accused or the conduct of the prosecution unless the case is adjourned.

In other cases the hearing shall continue without interruption.

39. When amendments of the charge have been made by the Court in virtue of art. 37 after the hearing of the witnesses, such witnesses may be called again and heard in regard to these amendments and fresh witnesses may also be called, if the Court thinks it necessary.

40. The Court may, in a judgment of conviction, alter the description of the offence constituted by the facts alleged in the committal order, without any preliminary amendment of the charge, but only within the limits mentioned in art. 33. In such a case the Court shall not pronounce a more severe sentence than that prescribed by the law dealing with the oflence charged against the accused by the committal order.

The accused may also be convicted, without any preliminary amendment of the charge, for any offence to which that charged against him in the committal order may be. reduced by reason of failure to prove any part of the facts alleged or as a result of facts proved by the defence.

When the charge is of a completed offence the accused may be sentenced for attempt at such offence.

CHAPTER V.

PROCEDURE AT THE HEARING.

4 1 . The accused shall be brought to the hearing unfettered, . but without prejudice to any supervision which it may be. necessary to exercise over him.

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He shall not be removed during the course of the hearing, unless by reason of some grave disturbance caused by him.

42. He shall state his name, surname, age, calling, residence, and place of birth.

43. The clerk of the Court shall read the committal order.

44. After the committal order has been read, the proceedings shall be conducted in accordance with the provisions of the first section of the second chapter of Part III. of the Code of Criminal Procedure, so far as they are not modified by the following provisions.

45. The State representative, the accused, or the civil claimant may, each of them so far as he is interested, object to the hearing of any witness not summoned on his application whose name has not been notified to him in accordance with arts. 10, 19, and 20 above, but subject to the provisions of the following article.

46. The Court may, in the course of the hearing, summon (in case of need, even by a warrant of apprehension) and hear any person, or cause to be produced any fresh document which may seem to be of use. Persons thus summoned as witnesses shall take an oath.

47. When a witness fails to appear on a summons before the Court, or when he does appear but refuses to give evidence the procedure to be adopted in respect of him shall be in accordance with arts. 167, 168, and 169 of the Code of Criminal Procedure.

The penalty which may be imposed on a witness who fails to appear shall, in the case of his first default, be that of fine not exceeding L.E.40 ; in the case of a second default it shall be that of fine not exceeding L.E.40 or imprisonment not exceeding one month. The penalty incurred by a wit-

ness who refuses to give evidence, although he appears, shall be that of fine not exceeding L.E. 40 or imprisonment not

exceeding two months.

48. The Court shall proceed to consider the case immediately after the conclusion of the hearing.

49. Before passing a sentence of death the Court shall take the opinion of the mufti of the locality, and the documents of the case shall be transmitted to him.

If the mufti does not give his opinion within three days of the transmission of the documents to him, the Court shall proceed without taking such opinion.

50. If the Court is of opinion that either the charge mentioned in the committal order or another crime or misdemeanour which satisfies the conditions mentioned in art. 40 has been proved against the accused, it shall declare the accused guilty and apply the penalty prescribed by law.

In the contrary case, it shall acquit the accused, who shall immediately be released unless he is detained for some other cause.

The judgment shall, in every case, decide as to any damages which the parties may claim.

51. Judgment shall be pronounced at the same sitting, or at the latest at the following sitting, and signed before the close of the session, and in any case within eight days of its pronouncement.

52. The judgments of Courts of Assize shall be subject to a motion in cassation in the form prescribed by arts. 229 to 232 of the Code of Criminal Procedure.

53. An accused person who fails to appear shall be tried in contumacy by the Court of Assize in accordance with the provisions of the Code of Criminal Procedure.

TRANSITORY PROVISIONS, ETC.

54. Subject to the following article, the provisions of this law shall apply to every criminal case of which a criminal tribunal has not cognisance before the 1st of February 1905.

The first session of each Court of Assize shall be held in the month of March 1905, unless the Minister of Justice adjourns it to the following month.

55. The Minister of Justice may, by order, adjourn until further order the institution of Courts of Assize in one or

more localities.

Every order providing for the institution of new Courts of Assize shall fix the dates as from which they shall take cognisance of the criminal cases of which the tribunals have not cognisance at such dates.

56. Arts. 190 to 214, 226, 227, and 242 of the Code of Criminal Procedure shall not apply to cases tried by the Courts of Assize.

57. Our Minister of Justice is charged with the execution of this law.

Done at Abdin Palace this 6th day of Zilkadeh 1322 (12 January 1905).

ABBAS HILMI.
Signed by the Khedive,

Mtjstapha Fehmy,

President of the Council of Ministers.

Ibrahim Fuad.

Minister of Justice.