THE ANGLO-INDIAN CODES

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THE ANGLO-INDIAN CODES

EDITED BY

WHITLEY STOKES, D.C.L.

OF THE INNER TEMPLE, BARRISTER-AT-LAW, CORRESPONDENT OF THE INSTITUTE OF FRANCE, AND LATE LAW-MEMBER OF THE COUNCIL OF THE GOVERNOR-GENERAL OF INDIA

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'Our principle is simply this — uniformity when you can have it; diversity when you must have it; but in all cases certainty.'—MACAULAY.

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TABLE OF ABBREVIATIONS.

Agra..... = Reports of the High Court of Judicature for the North-Western Provinces, by Munshí Hanuman Pershad and Lálá Lálita Pershad, vols. i–iv, Agra, 1867, 1868.

Agra F. B. ... = Reports, etc. containing Full Bench Rulings, Agra, 1867.

All. ..... = Indian Law Reports, Allahabad Series, vols. i–x, Allahabad, 1876–1888.

Ben. ..... = Bengal Law Reports, vols. i–xv, Calcutta, 1868–1875.

Ben. F. B..... = Full Bench Rulings of the High Court at Fort William, Calcutta, 1874.

Bom. ..... = Indian Law Reports, Bombay Series, vols. i–xii, Bombay, 1876–1888.

Bom. H. C. ... = Reports of Cases decided in the High Court of Bombay, vols. i–xii, Bombay, 1867–1875.

Bouln. ..... = Reports of Cases in the Supreme Court at Fort William (1856–1859), by C. Boulnois.

Bourke ..... = Reports of Cases . . . in the High Court of Judicature at Fort William, by Walter M. Bourke, Calcutta, 1867.

Cal. ..... = Indian Law Reports, Calcutta Series, vols. i–xv, Calcutta, 1876–1888.

C. L. R..... = Calcutta Law Reports.

Fulton ..... = Reports of Cases in the Supreme Court of Judicature at Fort William, Calcutta, by J. W. Fulton, 1845.

Hyde ..... = Reports of Cases, etc., by E. Hyde. Two vols., Calcutta, 1864.

Ind. Jur., N. S. = The Indian Jurist, New Series (Jan. 1866—Sept. 1867).

Mad. ..... = Indian Law Reports, Madras Series, vols. i–xi, Madras, 1876–1888.

Mad. H. C. ... = Reports of Cases decided in the High Court of Madras, vols. i–viii, 1864–1876.

Marshall ..... = Reports of Cases on Appeal, Calcutta, by W. Marshall, 1864.

Morl. Dig. ... = An Analytical Digest of all the reported Cases decided in the Supreme Courts of Judicature in India, etc., by W. H. Morley, London, 1850, vols. i–iii.

Morton ..... = Decisions of the Supreme Court of Judicature at Fort William, by T. C. Morton, Calcutta, 1841.

N. W. P. ..... = Reports of Cases heard and determined in the High Court, N. W. Provinces, vols. i–vii, Allahabad, 1873–1875.

Perry..... = Cases illustrative of Oriental Life and the application of English Law to India, by Sir Erskine Perry, London, 1853.

Suth. ..... = The Weekly Reporter, Appellate High Court, vols. i–xxvi, by D. Sutherland, Calcutta, 1864–1876.

Suth. 1864. ... = Sutherland's Reports of Decisions of the Appellate High Court from January to July, 1864, Calcutta, 1867.

Suth. Sp. N. ... = Special Number of the Weekly Reporter . . . containing Full Bench Rulings from July 1862 to July 1864, Calcutta.

Tayl. & Bell.... = Reports of Cases heard and determined in the Supreme Court of Judicature at Fort William in Bengal, vols. i and ii, Calcutta, 1851–1853.

With the exception of Maddock's reports of cases temp. Plumer V.C. and Leach V.C., the English Reports have been cited in the usual manner.

INTRODUCTION TO THE CODE OF CRIMINAL PROCEDURE.

THE importance of supplementing the Penal Code by wise rules for preventing offences and bringing offenders to justice appears from the following considerations[1]:—

First, expense, delay or uncertainty in applying the best laws for the prevention and punishment of offences would render those laws useless or oppressive:

Secondly, the law relating to criminal procedure is more constantly used, and affects a greater number of persons, than any other law. The offender and the individual injured are, as a rule, the only persons immediately affected by the commission and punishment of a crime. But in the measures prescribed for preventing crimes and prosecuting criminals any one, however unconnected with a given offence, may find himself involved. As a judge, a magistrate, a soldier, a volunteer, a policeman, or even a private citizen, every one is liable to become an active party in preventing the commission of crimes, in stopping the progress of crimes continuous in their nature, or in arresting offenders. In India, moreover, private persons are liable to serve in trying cases as jurors or assessors.

History of the codification of criminal procedure.

For these reasons the Government of India has laboured long and zealously to produce a code of Criminal Procedure which should be easily understood, cheap, expeditious and just. So long ago as the 20th March, 1847, the President in Council instructed the Indian Law Commissioners to prepare a scheme of pleading and procedure with forms of indictment adapted to the provisions of the Penal Code; and such a scheme, together with several forms, was prepared by Messrs. Cameron and Eliott, and submitted with a report dated 1 Feb. 1848[2]. Their draft was examined and considered by a new set of Commissioners appointed in 1854 under 16 & 17 Vic. c. 95. sec. 28, and comprising Sir John

[1] See Livingston's introductory report to the Code of Procedure prepared for the State of Louisiana, *Works*, i. 331.

[2] There was a previous report dated 4 Nov. 1843 regarding the qualifications, summoning, and challenging assessors and jurors. This I have not seen.

Romilly M.R., Sir John Jervis C.J., Sir Edward Ryan, and Messrs. Cameron, Ellis, Lowe (now Lord Sherborne), and Millett. These Commissioners produced a draft Code which was presented to Parliament in 1856, and was in the following year introduced into the Legislative Council by Mr. (now Sir Barnes) Peacock. It ultimately was passed by the Legislative Council as Act XXV of 1861. This Code came into force on 1 Jan. 1862: it applied in the first instance only to the territories subject to what were called the general regulations, but was gradually extended to the rest of British India except the Presidency-towns. It was amended by Acts XXXIII of 1861, XV of 1862, VIII of 1866, and (very largely) by Act VIII of 1869. Three years after, the principal Code and its amending Acts were repealed and replaced by Act X of 1872, drawn partly by Mr. (now Sir Fitzjames) Stephen (who tells us[1] that he framed the sections corresponding with sections 221–240 of the present Code); partly by Mr. H. S. Cunningham; but chiefly by the late Captain Newbery, personal Assistant to the Inspector General of the Panjáb police. This Code, like its predecessors, was not applicable to the Courts established by Royal Charter in Calcutta, Madras and Bombay.

The High Courts.

For these Courts, as well as for the High Court at Allahabad and the Chief Court at Lahore, provision was made by Act X of 1875 (*to regulate the procedure of the High Courts in the exercise of their original criminal jurisdiction*), which reduced the number of jurors to nine and the number of peremptory challenges to eight, dispensed with the necessity of an unanimous verdict, codified the law relating to *habeas corpus*, provided a simple substitute for the writ of *certiorari*, and repealed and re-enacted in an improved form the seven Acts[2] by which the Legislature had from time to time amended the criminal procedure of the Supreme Courts, or their successors the High Courts. This Act[3] was drawn by the writer and carried by Mr. (now Lord) Hobhouse.

[1] History of the Criminal Law, iii. 337 n. Captain Newbery informed me that Mr. Stephen also drew Chapters II–VII, XXIII (chiefly) and XXXVI, and that Mr. Cunningham drew sec. 90, most of Chap. XIX, and Chap. XXXIV.

[2] Acts XXXI of 1838, XXII of 1839, IV of 1849, XVI of 1852, XVIII of 1862 (except secs. 26–35, 47–53), and Act XIII of 1865, a useful measure, carried by Sir H. Maine, which (*inter alia*) abolished grand juries. Certain other provisions relating to the criminal procedure of the Supreme Courts were retained in 9 Geo. IV. c. 74, which was repealed by Act X of 1875, with the exception of secs. 1, 7, 8, 9, 25, 26, and 56. It also repealed certain enactments (in Acts XXIV of 1866 and XIII of 1869) relating to the High Court for the N.W. Provinces.

[3] Except secs. 97 and 98 (=Act X of 1882, sec. 305), which were drawn by Mr. Hobhouse.

The Code of 1872 was also inapplicable to the Magistrates' Courts at Calcutta, Madras, and Bombay. For these, provision was made by Act IV of 1877 (*to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns*). This Act, which increased the jurisdiction of the Presidency Magistrates, assimilated their procedure to that of the provincial Magistrates, and made many other improvements, was drawn by the writer and carried by Mr. (now Sir Theodore) Hope. The Presidency Magistrates.

It thus appears that, before the present Code of Criminal Procedure was passed, no less than three such Codes were in operation in British India; Act X of 1872, amended by Act XI of 1874, which was in force throughout the Mufassal; the High Courts' Act, X of 1875, which was in force in the Presidency-towns, Allahabad and Lahore; and the Presidency Magistrates' Act, IV of 1877, which, also, was in force in the Presidency-towns.

Many of the provisions of these Codes merely repeated one another; many of their rules, though dealing with the same subjects, unnecessarily varied in language; and the result was that the bulk of the Indian Statute-book was far greater than it needed to be, and that the Courts when construing one Code were often deprived of the guidance of prior decisions on another.

The primary object of the present Code, which was framed by the writer[1] at the suggestion of the Secretary of State in his despatch (Legislative), No. 44, dated 26th October, 1876[2], was to recast Objects of the present Code.

[1] In framing his draft he was aided chiefly by the decisions of the High Courts on Act X of 1872, but also by many of Livingston's remarks. In revising the draft he was aided by Mr. Justice Straight, who suggested (inter alia) the insertion of sec. 310, by Messrs. F. R. Cockerell and B. Colvin of the Bengal Civil Service, and by Mr. Fitzpatrick, Secretary, and Mr. R. J. Crosthwaite, Acting Secretary, to the Government of India in the Legislative Department. Mr. Fitzpatrick, in particular, redrew chapters VIII (*Security for keeping the peace*) and X (*Public Nuisances*).

[2] The Secretary of State's words were:—'The Draft Code of Criminal Procedure prepared by the Indian Law Commissioners in 1856 was intended by them for use in all the Courts, and although it was not deemed advisable to carry out the whole of this design when the Code of Criminal Procedure was enacted in 1861 for the Mufassal only, I think that circumstances are now more favourable to its completion. In the preparation of the High Courts Criminal Procedure Act, 1875, and of the present Bill [the Presidency Magistrates Bill, afterwards Act IV of 1877] the whole of the Code of Criminal Procedure has been carefully reviewed and freely amended, and it seems desirable that the Mufassal districts should not continue under a less perfect law than the Presidency-towns, but that they should enjoy the benefit of the latest corrections and improvements; and that whatever rules are intended to be observed by all the Courts alike should be placed before all in the same language, care being taken at the same time to define the special duties and procedure of each. This is

the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous [1] reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for that country. The language and arrangement of Act X of 1872 were, for obvious reasons, departed from only so far as was necessary for the main purpose of the Code. But it was obviously impossible to reproduce the inartificial wording of many of the sections, and an arrangement according to which, for example, the provisions for the prosecution of crimes came before the provisions for their prevention, and the charge (i. e. the written accusation of an offence) was dealt with *after* trials, appeal and execution.

Consolidation.

Though many of the outlying Acts and Regulations dealing with Criminal Procedure had been repealed and re-enacted by Act X of 1872, many more were still untouched, and the secondary object of the present Code was to consolidate these enactments, which were seven in number: namely, Acts XXIII of 1840 (Execution of process): V of 1861, section 6, part of sections 24 and 35 (Police): the unrepealed portions of XVIII of 1862 (Administration of Criminal Justice in the High Courts): II of 1869 (Justices of the Peace): XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction): XXI of 1879, Chapter III (Inquiries in British India into crimes committed abroad by British subjects); and Bengal Regulation XX, 1825 (Jurisdiction of Courts Martial).

The result of consolidating the Acts and the Regulation above specified was to substitute a single Code of 368 sections for eleven enactments containing 1020 unrepealed sections.

Arrangement of the present Code.

The present Code is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecu-

the best safeguard against conflicting rulings.

'I request, therefore, that your Excellency in Council will direct your attention to the question whether the Criminal Procedure Code of 1872 might not now be recast so as to combine with it the substance of the High Courts Act, 1875, and of the present measure [the Presidency Magistrates Act, IV of 1877], and thus at length to give to India a complete Code of Criminal Procedure.'

[1] About two hundred.

tions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

I.—Preliminary.

Part I consists of a single chapter containing the usual preliminary matter. The Code is declared (sec. 1) to extend to the whole of British India; and it has been applied, by executive orders, to many places outside the empire[1]. It contains no clause relating to personal application; but Act XXI of 1879, sec. 8, declares that the law relating to criminal procedure for the time being in force in British India shall, subject to modification by the Governor General in Council, extend (*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty, and (*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

Local extent.

Personal extent.

The wording of some of the definitions in Act X of 1872 has been amended; and definitions of 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule,' 'place,' and 'police station' have been added. The definition of 'complaint' has been amended so as to exclude the report of a police-officer and information given to a police-officer; and the definition of 'investigation' has been extended so as to comprise the proceedings of persons authorised by a Magistrate under section 160 or 203 to make local investigations. The definition of 'cognisable offence'—a somewhat ill-chosen name[2] for an offence for which a police-officer may arrest without warrant—has been amended so as to connect it with the second schedule. 'Warrant-case' is defined as a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months, and 'summons-case' as a case relating to an offence not so punishable. A clause has been added to the definition of 'High Court' so as to enable the Governor General in Council to appoint in outlying territories where no such Court is established by law, an officer to perform its functions under the Code. Expressions such as 'special law' and 'local law,' defined in the Penal Code, have the meanings attached to them respectively by that Code.

Definitions.

Cognisable offence.

Warrant-case.

Summons-case.

II.—Criminal Courts.

Part II, as to the constitution and powers of the Criminal Courts and offices, consists of two chapters, of which the first deals (*a*) with

[1] See Appendix A to the Code.

[2] Stephen, *Hist. Crim. Law*, iii. 331.

the five classes of Criminal Courts other than the High Courts[1] and other Courts created by special enactments[2], (*b*) with territorial divisions, (*c*) with Courts outside the Presidency-towns, (*d*) with the Courts of the Presidency Magistrates, (*e*) with Justices of the Peace, and (*f*) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The provisions of the Police Act (V of 1861), section 6, have been incorporated in this chapter, section 14. The Local Government has been empowered (sec. 16) to make rules for the guidance of Magistrates' Benches. This will result in uniformity of practice wherever such uniformity is desirable. Assistant Sessions Judges have been declared (sec. 17) subordinate to the Sessions Judge in whose Court they exercise jurisdiction. This precludes a doubt which had been raised on the subject.

Powers of Judges and Magistrates.

The second chapter treats of the powers of Judges and Magistrates, the description of offences cognisable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save that Magistrates of the first class are forbidden (sec. 29) to try offences under special or local laws which are punishable with imprisonment for more than seven years: such grave cases should be tried by a higher Court.

It is desirable that the police powers which magistrates can exercise in investigating offences should be clearly defined. In section 40 (=Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to show that powers conferred by one Local Government do not accompany an officer when he is transferred to a province under another Local Government (2 Cal. 117).

In connection with section 33, as to power to sentence to imprisonment in default of payment of fine, the Council passed simultaneously with the Code a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court (1 Bom. 223), that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

[1] As to these, see 24 & 25 Vic. c. 104, and the Acts constituting the Chief Court of the Panjáb, the Judicial Commissioners of Oudh, the Central Provinces and Burma, and the Recorder of Rangoon.

[2] Courts Martial (44 & 45 Vic. c. 58: Act V of 1869): the Vice-Admiralty Courts (26 & 27 Vic. c. 24, etc.): the Court for the trial of Bengal pilots (Act XII of 1859): and the Bombay Court of Petty Sessions (Rule, Ordinance and Regulation I of 1834, title 2, articles 1, 2, 5, 6, 7, 8).

III.—General Provisions.

Part III contains certain general provisions which it seemed convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates, the police and persons making arrests: arrest, escape and retaking: processes to compel appearance, processes to compel the production of documents, etc., and processes for the discovery of persons wrongfully confined. Here, again, the changes in the law are little more than verbal. But to the offences which the public are bound to assist in preventing, have been added (sec. 42) attempts to injure public property, railways, canals, and telegraphs. The section (45) requiring village-headmen, etc., to report, has, for obvious reasons, been extended to escaped convicts and proclaimed offenders, and (to provide for villages in hill-passes through which bands of dacoits habitually proceed) also to cases where the criminal merely goes through the village. Aid and information.

Nothing in the whole course of criminal procedure is so productive of vexatious proceedings and serious consequences as Arrests. The utmost care therefore has been taken in framing the sections on this subject so as to make them clear and precise. The wording of section 178 of the Code of 1872, which empowered the police to use 'all means necessary to effect the arrest' of a person forcibly resisting or attempting to escape, was dangerously wide. The present Code (sec. 46) accordingly explains that this power does not give the right to cause the death of an arrested person who is not accused of an offence punishable with death or with transportation for life. In England, if the offence with which the runaway is charged is a treason or a felony (which includes manslaughter, robbery, rape and even larceny), or a dangerous wound given, the homicide is justifiable, and so under the New York Code of Criminal Procedure, section 174. In Scotland, however, the killing is justifiable only when he is charged with a capital offence[1]. The Code here, as settled by the Select Committee, followed the law of Scotland, which, in Mr. Mayne's opinion, is in India the safer rule. The words 'or with transportation for life' were afterwards introduced in Council chiefly to enable the police to cope with the well-armed and desperate bands of dacoits who from time to time infest some of the districts of the North-Western and the Central Provinces. These outlaws will not surrender unless the only alternative be that of death, and if the police are not allowed to meet them on at least equal terms, the attempt to arrest them may be abandoned. Arrests.

[1] See Alison's *Principles of the Criminal Law of Scotland*, pp. 36, 37.

The section (46) authorising, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them. Power has been given (sec. 49) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein. Persons making arrests have been expressly empowered (sec. 53) to take from the person arrested any offensive weapons which he may have about him. The police have been authorised (sec. 54) to arrest, without warrant, deserters from the Navy; and sections (66, 67), equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

The period for which a person arrested without warrant may be detained by the police is carefully limited by section 61.

The power to arrest without warrant persons against whom a hue and cry has been raised[1] is omitted, as that obsolete common-law process is unknown in India. The section authorising masters and mates to arrest deserters from ships is also omitted, as the matter is sufficiently provided for by the Merchant Shipping Act[2].

Service of summons.

Under the Code of 1872, section 153, summonses issued by Magistrates were ordinarily served 'through a police-officer': the present Code (sec. 68) provides that, subject to rules to be made by the Local Government, they may also be served by an officer of the Court. Provision is made (secs. 73, 74) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.

Warrant of arrest.

Section 75 requires that all warrants of arrest, whether issued in the Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, did not in such cases require a seal. Warrants of arrest issued by a Bench of Magistrates may be signed by any member of the Bench. This legalises what probably was the practice.

Sub-divisional Magistrates have been empowered (sec. 78) to direct warrants to landholders, etc., for the arrest of escaped convicts. This extension is in harmony with the large powers generally possessed by Magistrates in charge of subdivisions.

Section 87 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

Attachment.

The Code of 1872 did not provide how attachment of debts

[1] Act X of 1872, sec. 92, cl. 3.
[2] Act I of 1859, sec. 86.

and other moveable property is to be effected. Provision has, therefore, been made (sec. 88) for this purpose; and the powers, duties and liabilities of receivers have been declared by reference to the Code of Civil Procedure.

Production of documents.

A person required merely to produce a document will (as under the Civil Procedure Code, section 164) be deemed to have complied with the requisition, if he causes the document to be produced instead of attending personally to produce it (sec. 94). This amendment obviously tends to save time and expense, and thus to diminish the unpopularity of our Courts.

Search-warrants.

Section 100 gives Presidency Magistrates, Magistrates of the first class, and Sub-divisional Magistrates, power to issue warrants to search for persons wrongfully confined. No such power, though needed, was supposed to exist in India, except, of course, in the Presidency-towns, where the High Courts issued, under Act X of 1875, directions of the nature of a *habeas corpus*.

Provision is made (sec. 103) for making a list, signed by witnesses, of things found in execution of a search-warrant beyond the jurisdiction of the Court issuing it. The requirement of the signature of the witnesses tends to check the irregularities which sometimes occur in the course of searches.

IV.—Prevention of Offences.

Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the police. Nothing is here said as to the prevention of intended offences by personal resistance. For the Penal Code (secs. 96–106) contains rules as to the cases in which such resistance is lawful and the degree to which it may be carried.

Security for keeping the peace.

Chapter VIII. In the chapter relating to security for keeping the peace, and for good behaviour, the section (106) dealing with security for keeping the peace on conviction has been extended to cases in which the accused is convicted of criminal intimidation by threatening injury to person or property. This is an offence of the same nature as taking unlawful measures with the intention of committing a breach of the peace, and should therefore, as regards the taking of security, be placed on the same footing. When the conviction is set aside on appeal or otherwise, the bond will become void. On this the Code of 1872 was silent.

In section 110 (=sections 505, 506 of the Code of 1872) the words which give the Magistrate power to demand security from persons of notoriously bad livelihood or of a 'dangerous character' have been omitted. It was objected that these words were vague, and that the powers which they placed in the hands of the police were liable to great abuse.

In 1882, there was in the North-Western Provinces a class of bad characters who habitually extorted money from respectable persons by threatening to insult or beat them. Section 110 contains a provision (inserted at the suggestion of the Local Government) enabling Magistrates to protect the public against such a system of extortion. It should also be extended so as to apply to habitual protectors or harbourers of thieves and to habitual aiders in the concealment or disposal of stolen property.

The Magistrate is empowered (sec. 112) to make an order as to the character and class of the sureties required. This, it is hoped, will prevent certain persons making a trade of becoming sureties. The object of the law is not merely to provide a money-security, but also to obtain respectable persons as guarantees for the good behaviour of the criminal concerned.

For the purposes of the section (117) as to enquiring into the truth of the information upon which a Magistrate has acted under this chapter, the fact that a person is an habitual offender may be proved by evidence of general repute.

The Code of 1882 contains no provision corresponding to sections 499 of the Code of 1872 and 211 of the Presidency Magistrates' Act. If, before the expiration of the term of the original bond, it appears to the Magistrate unsafe to release the obligor at the end of that term, in justice to the obligor fresh proceedings should be instituted.

Security for good behaviour.

Some change has been made (sec. 117) in the manner of conducting inquiries regarding security for good behaviour. They are under the present Code made as in warrant-cases, instead of as in summons-cases, which was formerly the practice. Where the person who would otherwise be ordered to give security is a minor, the bond (section 118) will be executed only by his sureties. It has been made clear in section 126 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Sub-divisional Magistrates are empowered (sec. 109) to require security for good behaviour.

Dispersion of unlawful assemblies.

Chapter IX, on dispersion of unlawful assemblies, contains the rules for calling out and employing the military, in aid of the

civil, power. They were first enacted in the Code of 1872, and embody (according to Sir Fitzjames Stephen[1]) the principles laid down in the charge of Tindal C.J. to the grand jury of Bristol in 1832, as to the duty of soldiers in dispersing rioters. The rules carry the law somewhat further than it has yet been carried in England, as they expressly indemnify all persons acting in good faith in compliance with requisitions under sections 128 and 130, and forbid prosecutions of magistrates, soldiers, and police officers, except with the sanction of the Governor-General in Council. In this chapter volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's Army.

Suppression of nuisances.

In Chapter X, as to Public Nuisances, section 133 has been extended to cases of keeping goods or merchandise (for example, damaged rice) injurious to the public health, and of carrying on occupations offensive to the religious feelings of any considerable section of the community. The latter alteration is intended to meet such cases as that of a butcher exercising his trade in a Hindú town so as to cause risk of breach of the peace.

Chapter XI deals with temporary orders in urgent cases of nuisance. The power conferred by section 518 of the Code of 1872 was intended to be exercised only in urgent cases where a speedy remedy is desirable. The present Code (sec. 144) provides that no orders under Chapter XI shall remain in force for more than two months, unless in case of danger to human life, health or safety, or a riot or affray, the Local Government directs otherwise. Where time allows, the procedure must be under Chapter X.

Disputes as to immoveable property.

Chapter XII empowers Magistrates to interfere in disputes as to immoveable property likely to cause a breach of the peace, to decide whether any of the parties is then in actual possession of the subject of dispute, and if so, to declare him entitled to retain possession until evicted in due course of law, and has been expressly restricted to cases in which the property is tangible. It is founded on Act IV of 1840 and the seven Regulations mentioned in that Act, and is of great use in India, where disputes as to boundaries, water-courses, alluvion and diluviated land are frequent and sometimes sanguinary. The section seems to require amendment so as to render it impossible to decide (as the Calcutta High Court has decided[2]) that a dispute as to the right to collect rent is a dispute concerning tangible immoveable property.

Doubts had been raised as to whether the report of the person

[1] Hist. Crim. Law, iii. 343. [2] 11 Cal. 413.

deputed (under section 148) to make a local inquiry may be read as evidence in the case. The Code settles this in the affirmative.

Preventive action of police.

Chapter XIII treats of the action of the police in preventing the commission of cognisable offences, injury to public property, and the use of false weights and measures.

V.—Information to the Police, and their power to investigate.

Part V consists of a single chapter (XIV) relating to information to the police concerning the commission of offences, and their power to investigate cases. It corresponds with Chapter X of Act X of 1872, and sections 379 and 380 of the same Act. It deals with the examination of witnesses by the police, searches, and sending cases to the Magistrate when the evidence is sufficient. Precautions are taken (secs. 162, 163) against abuse by the police of their powers under this chapter.

The words 'or that immediate arrest is not necessary,' which were contained in section 117 of Act X of 1872, have been omitted from section 158 of the present Code, as it is not apparent why a police-officer should be debarred from investigating a case of a cognisable offence because he does not at starting feel himself justified in arresting any person.

Section 164 makes it clear that confessions to Magistrates shall not only be 'taken,' but signed and certified, like examinations of accused persons. In the form of memorandum relating to confessions words have been introduced to show that the confession was taken in the Magistrates' presence and hearing, and that it contains a full and true account of the statement.

Searches.

In sections 165 and 166, dealing with searches by the police, the law has been amended so as to meet difficulties which had arisen in practice. In section 167 it has also been amended. On the one hand, there is strong objection to allowing an accused person to be detained at a police-station longer than is necessary, and, on the other, to insist on his being forwarded to the Magistrate, when his presence on the spot may be indispensable for tracking out crime or recovering property, might be a serious impediment to justice. Under proper precautions, the detention of the accused for sufficient reasons is allowed, but the period of detention has been limited to fifteen days in the whole.

Detention of the accused.

Inquiries into deaths.

Part V also requires (sec. 174) the police to inquire and report on suicides and deaths caused by another person, an animal, machinery or an accident. Power resembling that conferred on

Coroners by Act IV of 1871, section 11, has been given (sec. 176) to Magistrates authorised to hold inquests to disinter and examine corpses in order to discover the cause of death.

VI.—Proceedings in Prosecutions.

Having thus dealt with the means of preventing inchoate offences and arresting the course of such as are in operation, having also dealt with information to the police of offences and the consequent preliminary investigation, the Code next sets forth the mode of conducting prosecutions for consummated offences.

Part VI treats of proceedings in prosecutions up to appeal, and is divided into sixteen chapters, arranged as follows:—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials; XVI. Complaints to Magistrates; XVII. Commencement of Proceedings before Magistrates; XVIII. Inquiry into cases triable by the Court of Session or High Court; XIX. The Charge; XX. Trial of Summons-Cases by Magistrates; XXI. Trial of Warrant-Cases by Magistrates; XXII. Summary Trials; XXIII. Trials before High Courts and Courts of Session; XXIV. General Provisions as to Inquiries and Trials; XXV. Evidence; XXVI. The Judgment; XXVII. Submission of Sentences for Confirmation; XXVIII. Execution; XXIX. Suspensions, Remissions, and Commutations of Sentences; XXX. Previous Acquittals or Convictions.

It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

Jurisdiction of Courts in inquiries and trials.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial. Here the general rule is (sec. 177) that every offence shall be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. But there are special provisions for cases where the act has been done in one local area and the consequence has ensued in another (sec. 180): where the act, e.g. an abetment, is an offence by reason of its relation to another act which is also an offence: where it is uncertain in which of several local areas an offence has been committed: where an offence is committed partly in one local area and partly in another: where the offence is a continuing one and continues to be committed in more local areas than one: where it consists of several acts done in different local areas (sec. 182): where it is committed on a journey (sec. 183). There are also special rules as to inquiry into and trial of the offences of thuggee, dacoity, escape from custody, criminal mis-

appropriation, criminal breach of trust and theft (sec. 182), and as to offences against the laws relating to railways, telegraphs, the post office, and arms and ammunition (sec. 184).

Sections 9 and 10 of the Foreign Jurisdiction Act (XXI of 1879), which deal respectively with the liability of British subjects for offences committed out of British India, and with the reception in evidence of depositions made before Political Agents, have been transferred to this part of the Code (sections 188 and 189), which is obviously their proper place.

To the provisions contained in the previous law regarding the transfer of cases the present Code adds a clause (sec. 192), providing that, when any Magistrate of the first class, specially empowered in this behalf by the District Magistrate, has taken cognisance of any case, he may transfer it for inquiry or trial to any other competent Magistrate in such district. This enables such Magistrates to distribute the work in their Courts, when it is necessary to do so, with less delay than was formerly unavoidable.

Chapter XV deals, secondly, with the conditions requisite for the initiation of proceedings,—the receipt of a complaint: a police-report: information from any other person: the Magistrate's own knowledge or suspicion; or, in the case of a contempt, the sanction or complaint of the public servant concerned or of his official superior.

Section 195 requires that the sanction to entertain complaints of contempts and certain offences against public justice or relating to documents given in evidence shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed. The sanction may be revoked or granted by any authority to which the authority giving or refusing it is subordinate. And in order to remove doubts which had been felt on the point, it is declared that, for the purposes of this section, every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie. Sanctions or complaints are also required in the case of prosecutions for acts done in dispersing unlawful assemblies (sec. 132), for state-offences (sec. 196), for acts committed by judges and public servants as such (sec. 197), and for breach of contracts of service, defamation, and certain offences relating to marriage and married women (secs. 198, 199).

Limitation of prosecutions.

No sanction under sec. 195 shall remain in force for more than six months from the date on which it was given; but of course it may be renewed.

The Code contains no other rule for the limitation of prosecutions.

All other offences under the Penal Code,—even mere attempts—even those offences which are compoundable without the permission of the Court—may be prosecuted after any lapse of time, because allowing such prosecutions to be barred would (to use the words of Livingston) 'hold out a reward to ingenious villainy and address in concealment.' But in the absence of a law of limitation there is danger that innocent men may be convicted owing to the death of their witnesses or the destruction of their documentary evidence; and sundry special and local laws have prescribed periods within which offences against their provisions must be prosecuted. Of these laws the chief are as follows: they are here classified according to the periods which they respectively prescribe:—

Five Years.

21 Geo. III. c. 70, sec. 7 (prosecution of the Governor-General, etc.)

Three Years.

24 Geo. III. c. 25, sec. 82 (prosecution of British subjects guilty of offences in India).

Two Years.

Act XV of 1872, sec. 76 (Marriage of Christians).

One Year.

The Army Act, 1881 (44 & 45 Vic. c. 58), sec. 170.
XX of 1847, sec. 16 (Copyright).
XIII of 1857, sec. 26 (Opium, Bengal).
Ben. Act V of 1866, secs. 15, 24 (Hackney Carriages, Calcutta).

Six Months.

VI of 1879, sec. 9 (Preservation of Elephants).
XXII of 1881, sec. 47 (Excise, Northern India, Burma, Coorg).
XII of 1882, sec. 11 (Salt).
XVIII of 1882, sec. 16 (Burma Steam boilers).
V of 1886, sec. 13 (Mirzapur Stone Mahál).
Mad. Act VI of 1871, sec. 42 (Excise on Salt).
Mad. Act I of 1873, sec. 9 (Wild Elephants).
Mad. Act I of 1886, sec. 72 (Excise).
Mad. Act II of 1886, sec. 87 (Madras Harbour).
Bom. Act V of 1873, sec. 26 (Steam boilers).
Bom. Act VII of 1873, sec. 62 (Salt).
Ben. Act VII of 1864, sec. 37 (Salt).
Ben. Act VII of 1878, sec. 72 (Excise).
Ben. Act III of 1879, sec. 12 (Steam boilers).

Four Months.

Bom. Act V of 1878, sec. 67 (Excise).

Three Months.

XIX of 1850, sec. 18 (Binding Apprentices).
XXIV of 1859, sec. 53 (Police, Madras).

XLVIII of 1860, sec. 29 (Police).
V of 1861, sec. 42 (Police).
XX of 1869, sec. 26 (Volunteers).
X of 1870, sec. 58 (Land Acquisition).
VII of 1878, sec. 198 (Sea Customs).
XI of 1878, sec. 33 (Arms).
XX of 1879, sec. 12 (Glanders and Farcy).
II of 1880, sec. 19 (Burma District Cesses and Police).
XV of 1882, sec. 97 (Presidency Small Cause Courts).
Mad. Act VIII of 1867, sec. 75 (Police, Madras Town).
Mad. Act III of 1871, sec. 169 (Improvement of Towns).
Mad. Act I of 1884, sec. 446 (Madras City Municipal Act).
Bom. Act VII of 1867, sec. 42 (District Police).
Bom. Act III of 1872, sec. 296 (Bombay Municipality).
Bom. Act VI of 1873, sec. 82 (Mufassal Municipalities).
Ben. Act IV of 1866, sec. 99 (Calcutta Police).
Ben. Act III of 1884, sec. 353 (Mufassal Municipalities).

Two Months.

Ben. Act IV of 1876, sec. 351 (Calcutta Municipality).
Ben. Act VIII of 1880, sec. 12 (Contagious Diseases, Animals).

One Month.

XIX of 1850, sec. 18 (Binding Apprentices).

Ten Days.

Mad. Act II of 1866, sec. 16 (Cattle Disease)[1].

Complaints to Magistrates.

Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (sec. 201) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

The present Code makes it clear that the power (sec. 202) to postpone the issue of process cannot be exercised by a Magistrate of the third class.

Commencement of proceedings.

Chapter XVII treats of the commencement of proceedings before Magistrates: shows when a summons or a warrant should issue, and enables the Magistrate in certain cases (sec. 205) to dispense with the personal attendance of the accused.

[1] For similar limitations in England, see Archbold, 79, 80. In Scotland there seems to be a vicennial prescription for *all* crimes where no sentence of fugitation has been pronounced and no step has been taken to bring the offender to trial. In the case of wrongous imprisonment there is a triennial prescription. According to the New York Code of Criminal Procedure, §§ 141, 142, a prosecution for murder (or abetment of murder, 4 Wend. 229) may be commenced at any time; but an indictment for every other crime must be found within five years after its commission, except where a less term is prescribed by statute.

In Chapter XVIII—of inquiry into cases triable by the Court of Session or High Court—power is given (sec. 209) to the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. This chapter also contains provisions as to the framing of the charge (sec. 210), the witnesses for the defence (secs. 211, 212, 216, 217), and the custody of the accused pending trial (sec. 220). Inquiry into cases triable by Sessions Court.

The accused should have full notice of the offence charged against him. Chapter XIX, therefore, deals with the form of the charge (secs. 221–224): the effect of the absence of a charge or of errors in one (secs. 225, 232): alterations in charges (sec. 227): joinder of charges (sec. 233); and the trial at one trial for several offences (secs. 234, 235, 236, 239). It extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made in the Presidency Towns, Allahabad and Lahore by Act X of 1875; and with reference to Mr. Justice West's observations in 11 Bomb. H. C. 241, on the corresponding section (457) of the Code of 1872, section 238 of the present Code has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence. The charge.

From the section (235), corresponding with section 454 of the Code of 1872, have been omitted all provisions as to the amount of punishment. They obviously belong to substantive law, not to procedure, and find their proper place in the Penal Code as amended by Act VIII of 1882. The illustrations have also been amended.

Provision has been made in section 238 for the case where a person charged with an offence proves circumstances which reduce it to a minor offence. He may then be convicted of the minor offence, though he is not charged with it.

Chapter XX prescribes a simple procedure for the trial by Magistrates of summons-cases. No formal charge need be framed. The Magistrate states to the accused the particulars of his alleged offence, and asks him if he has any cause to show why he should not be convicted. If he admits his guilt he is convicted. If he does not, evidence is taken—a mere memorandum of its substance being made (sec. 355)—and he is acquitted or sentenced according to its effect. This chapter should expressly provide, in sec. 244, for cross-examination of witnesses. When the complaint is frivolous or vexatious, the Magistrate may order the complainant to pay the accused compensation not exceeding rs. 50. To the section (250) giving this power a clause has been added, providing that, when awarding compensation in any subsequent civil suit relating to the Trial of summons-cases. Frivolous complaints.

same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Trial of warrant-cases.

Chapter XXI deals with trials of warrant-cases by Magistrates. The chief distinction between this procedure and that provided for the trial of summons-cases is that under Chapter XXI the Magistrate first hears the complainant (if any) and takes the evidence for the prosecution, and then, if there is ground for presuming the guilt of the accused, frames a written charge to which he is required to plead. Moreover, the evidence of each witness is taken down in writing (sec. 356): it is not enough (as in trying a summons-case) to make a memorandum of its substance. Here, as in Chapter XVIII, has been inserted a clause (sec. 253) authorising the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. Under the Code of 1872 (sec. 215), no matter how groundless the charge might be, the Magistrate was compelled, before discharging the accused, to take the evidence of the complainant and of all the witnesses whom the prosecution might bring forward. The provision in the same Code, sec. 218, that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution, has been expressly confined (sec. 256) to cases where these witnesses are present in the Court or its precincts. The power to recall witnesses for the prosecution after they had left the Court was often abused for the purpose of harassment and delay.

Summary trials.

Chapter XXII deals with summary trials of the minor offences specified in sec. 260. Here the Local Government is authorised to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily. The omission in the Code of 1872 to provide for these abetments and attempts was obviously *per incuriam*. The offences of retaining stolen property not exceeding rs. 50 in value, and assisting in the concealment or disposal of stolen property not exceeding rs. 50 in value, have been added to the list of those triable in a summary way; and the offence of receiving stolen property will not be so triable where its value exceeds that amount. The limit of imprisonment under this chapter is three months (sec. 262). Where no appeal lies, the Magistrate or Bench neither records the evidence nor frames a formal charge; but merely enters certain particulars in such form as the Local Government directs (sec. 263). No reasons are given except in case of conviction.

Trials before High Courts and

Chapter XXIII provides a common procedure for the High Courts and the Courts of Session in trials before those tribunals.

But all trials before a High Court must be by a jury of nine; all trials before a Court of Session must be either by a jury of an uneven number, not more than nine nor less than three, or with the aid of assessors; and prosecutions before the Court of Session must be conducted by a public prosecutor (sec. 270). Sections 271, 272 deal with the plea of guilty (which there is no power to withdraw), refusal or omission to plead, and 'claim to be tried.' The pleas of previous conviction and previous acquittal are dealt with in another part of the Code (sec. 403). There is no plea of insanity, this matter being provided for by Chapter XXXIV. There are also special rules (secs. 274, 275) as to juries, challenges (secs. 277–279), foremen (sec. 280), swearing jurors (sec. 281), discharging juries (sec. 282), assessors (secs. 284, 285), the procedure to the close of the case, the charge (sec. 297), the respective duties of the judge and the jury (secs. 298, 299), and, lastly, the verdict (secs. 301–307). As to this the rules are peculiar :— Courts of Session.

In the High Court.

When the nine jurors are unanimous, or when as many as six are of one opinion and the judge agrees with them, the judge gives judgment accordingly.

When the jury are satisfied that they will not be unanimous, but six are of one opinion, the foreman so informs the judge, and if the judge disagrees with the majority he at once discharges the jury.

If there are not so many as six who agree, the judge, after such interval as he thinks reasonable, discharges the jury.

In the Court of Session.

When the judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority (two, three, four, or five) of the jurors, he gives judgment accordingly. If the accused is acquitted, the judge records judgment of acquittal. If he is convicted, the judge passes sentence.

But if the judge disagrees so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he submits it accordingly, recording the grounds of his opinion.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (sec. 307) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, was the intention of the corresponding clause of section 263 of Act X of 1872. The change was suggested by the decision of Markby J. in 3 Cal. 189.

To prevent jurors and assessors from being biassed against the accused by the knowledge that he is an old offender, section 310 provides that 'the part of the charge stating the previous conviction shall not be read out . . . unless and until he has either pleaded Offence committed after previous conviction.

guilty to, or been convicted of, the subsequent offence.' There is a similar rule in England (6 & 7 Wm. IV. c. 111).

General provisions.

Chapter XXIV contains general provisions as to inquiries and trials. The subject of tendering pardons to accomplices is first dealt with. Such tender can only be made in cases triable exclusively by the Court of Session or High Court. In cases where a pardon is tendered to and accepted by a person, and such person gives evidence before a Magistrate in a preliminary inquiry, he should not be forced to adhere to that evidence in a subsequent trial, through fear of being prosecuted on an alternative charge of giving false evidence either before the Magistrate or the Judge. It might happen that he was wrongly induced or coerced into giving evidence before the Magistrate. Section 339 accordingly provides that no prosecution for giving false evidence in a statement made under promise of pardon shall be entertained without the sanction of the High Court.

Pardons to accomplices.

Examination of the accused.

Sec. 342 gives the power to examine the accused for the purpose, only, of enabling him 'to explain any circumstances appearing in the evidence against him.' The section assumed its present form partly owing to a judgment of the High Court of Bengal (6 Cal. 102), partly owing to the following words of Edward Livingston[1]: 'An unrestrained right of interrogating is also very apt to produce insidious and catching questions. Instead of a cool and impartial attempt to extract the truth, the examination becomes a contest, in which the pride and ingenuity of the magistrate are arrayed against the caution or evasions of the accused; and every construction will be given to his answer that may fix upon him the imputation of guilt.' It may be added that badgering by the judge is apt to arouse undue sympathy for the prisoner.

Compounding offences.

Much doubt existed as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject was contained) was in 1882 excessively obscure, and this obscurity was increased rather than diminished by the illustrations annexed to that section. The Criminal Procedure Code of 1882 repeals these illustrations; and section 345 declares in unmistakeable language that certain specified offences, and no others[2], may be compounded. These are—

Uttering words etc. with deliberate intent to wound religious feelings (Penal Code, sec. 298).

Causing hurt (Penal Code, secs. 323, 334).

[1] Works, i. 355.

[2] It may therefore be doubted whether sec. 55 of the Madras Forest Act, Mad. Act V of 1882, and sec. 67 of the Madras Excise Act, Mad. Act I of 1886, are not *ultra vires* of the local legislature by which they were enacted.

Wrongfully restraining or confining any person (Penal Code, secs. 341, 342).

Assault or use of criminal force (Penal Code, secs. 352, 355, 358).

Unlawful compulsory labour (Penal Code, sec. 374).

Mischief, when the loss or damage is caused to a private person (Penal Code, secs. 426, 427).

Criminal trespass and house-trespass (Penal Code, secs. 447, 448).

Criminal breach of contract of service (Penal Code, secs. 490, 491, 492).

Adultery, and enticing etc. a married woman (Penal Code, secs. 497, 498).

Defamation (Penal Code, sec. 500).

Printing or engraving defamatory matter (Penal Code, sec. 501.)

Sale of printed or engraved substance containing defamatory matter (Penal Code, sec. 502).

Insult intended to provoke a breach of the peace (Penal Code, sec. 504).

Criminal intimidation, except when the offence is punishable with imprisonment for seven years (Penal Code, sec. 506).

The offences of voluntarily causing hurt or grievous hurt, and those of causing hurt or grievous hurt by an act which endangers life, which are punishable under the Penal Code, sections 324, 335, 337 or 338, are compoundable with the permission of the Court, and by the person to whom the hurt has been caused.

Simultaneously with the new Code the Indian Legislature passed Act VIII of 1882, section 6 of which, for the Exception to section 280 of the Penal Code, substituted the following :—

'*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.'

Section 349 prescribes a procedure in cases where a second or third class Magistrate finds that he cannot pass a sentence sufficiently severe. Section 350 provides for convictions or commitments on evidence partly recorded by one Magistrate and partly by his successor, and should be modified so as to make it clearly applicable to inquiries under section 107.

Taking evidence.

Chapter XXV contains rules as to the mode of taking and recording evidence in inquiries and trials (secs. 353–360), and as to the interpretation of evidence to the accused or his pleader (sec. 361). The evidence must, as a rule, be taken down by the Magistrate or Judge, or in his presence and hearing. The provisions as to this

subject do not apply to the High Courts or the Chief Court of the Panjáb. The Presidency Magistrates are provided for by section 362. It is hardly necessary to say that the Indian, like the English, system of criminal procedure does not permit evidence to be taken in secret.

The judgment.

Chapter XXVI deals with the judgment, the time and place of delivering it (sec. 366), its language and contents (sec. 367). Provision is made (sec. 371) for explaining it to the accused and giving him a copy or translation of it.

Confirmation of sentences.

Chapter XXVII treats of the confirmation of sentences. This is necessary (*a*) where a Sessions Judge, Additional Sessions Judge, or Joint Sessions Judge passes a sentence of death, and (*b*) where an Assistant Sessions Judge or a specially empowered District Magistrate passes a sentence of imprisonment for a term exceeding four years, or any sentence of transportation (secs. 31, 34). In case (*a*) the sentence is submitted for confirmation to the High Court: in case (*b*) to the Sessions Judge. The confirming authority may make further enquiry or direct it to be made (secs. 375, 380), and may alter the sentence or acquit the accused.

Execution.

Chapter XXVIII, Execution.—Here the Code deals with the execution of sentences of death (sec. 381): with the postponement and, if the High Court think fit, commutation of such sentences in the case of pregnant women (sec. 382): with the execution of sentences of transportation and imprisonment (secs. 383–385): the levy of fines (secs. 386–388): the infliction of whipping (secs. 390–395); the execution of sentences on escaped convicts and on offenders already sentenced for another offence (secs. 390–398); and the confinement of youthful offenders in reformatories (sec. 399). In section 395 (= section 313 of the Code of 1872) the imprisonment which may be inflicted in lieu of whipping has been limited to twelve months. But on the other hand, the proviso that the whole period of imprisonment to which the offender is sentenced shall not exceed that to which he was liable by law, or that which the Court is competent to award, has been cancelled, and the power to imprison is thus extended.

Persons sentenced to transportation.

There are no sections in this chapter corresponding with sections 319, 320 of the Code of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and simultaneously with the passing of the present Code, Act IX of 1882 was passed, substituting for section 33 of the Prisoners' Act a section equivalent to the Code of 1872, sections 319, 320.

Chapter XXIX treats of suspensions, remissions and commutations of sentences. Where application is made for the suspension or remission of a sentence, the Government is empowered (sec. 401) to require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion. Suspension and remission of sentence.

The power of the Government to commute punishment (sec. 402) has been so worded as to authorise a sentence of rigorous, to be commuted to one of simple, imprisonment. This could not be done under the Code of 1872. Commutation.

No person should be subjected to a second prosecution for a crime for which he has once been prosecuted and duly convicted or acquitted. Previous acquittal or conviction.

Chapter XXX consists of a single section dealing with the effect of a previous acquittal or conviction by a Court of competent jurisdiction in (it is presumed) British India[1]. Sir Fitzjames Stephen[2] justly says that this section seems misplaced[3]. He thinks it should follow the provisions as to charges. A better place for it would be in the preliminary chapter, where the New York Code places the corresponding section, or after section 271, as to the plea of guilty, where there might be a section dealing with other pleas—want of jurisdiction, previous acquittal, previous conviction, and (in proceedings under certain special laws) limitation.

VII.—Appeal, Reference and Revision.

Part VII deals with appeals, references, and the revisional jurisdiction of the High Court.

Chapter XXXI begins by declaring that no appeal shall lie from any judgment or order of a Criminal Court except as provided by the Code or by any other law for the time being in force. It expressly declares (sec. 412) that there shall be no appeal, except as to the extent or legality of the sentence, where the accused has pleaded guilty and been convicted by the Sessions Court or a Presidency Magistrate, and that there shall be no appeal by the accused in the petty cases and from the summary convictions mentioned in sections 413 and 414. Sentences on European British subjects are excepted from the latter provision (sec. 416). An appeal may lie on a matter of fact as well as a matter of law, Appeals.

[1] The Code is silent as to the effect of a previous conviction or acquittal in another country, when the jurisdiction is concurrent. See as to this the New York Cr. Proc. Code, § 139.

[2] Hist. Criminal Law, iii. 338 n.

[3] It was placed in its present position in order to avoid the forward references to sec. 273.

except where the trial was by jury, in which case the appeal lies on matter of law only (sec. 418). For the purposes of appealing, the alleged severity of a sentence is deemed a matter of law (sec. 418). The power to appeal was liberally bestowed by the Code of 1872, and only three new cases are provided for by the present Code. An appeal has been given (sec. 405) from orders rejecting applications for delivery of attached property. Appeals are also given from convictions in contempt-cases by Courts of Small Causes in the Presidency-towns, and by Registrars and Sub-registrars being also Civil Courts.

The nine appeals given by the present Code are as follows:—

	Appellate Court.
1. From a conviction on a trial by a Magistrate of the second or third class, or by a Bench of Magistrates invested with second or third class powers.	The District Magistrate or a Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals (sec. 407.)
2. From a sentence under section 349 by a Sub-divisional Magistrate of the second class.	Ditto.
3. From a conviction on a trial by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class.	The Court of Session, except where the sentence is subject to the confirmation of that Court, in which case the appeal lies to the High Court (sec. 408). Where the appellant is an European British subject, he may at his option appeal either to the Court of Session or the High Court (sec. 408).
4. From a conviction on a trial by a Sessions Judge or an Additional or a Joint Sessions Judge.	The High Court (sec. 410).
5. From a sentence by a Presidency Magistrate to imprisonment for a term exceeding six months or to fine exceeding rs. 200.	The High Court (sec. 411).
6. From an original or appellate order of acquittal passed by any Court other than a High Court.	The High Court (sec. 417).
7. From the rejection of an application under section 89 for delivery of attached property or its proceeds.	The Court to which appeals ordinarily lie from the sentence of the Court rejecting the application (sec. 405).
8. From the order of a Magistrate (other than the District Magistrate or a Presidency Magistrate) to give security for good behaviour (secs. 118, 126.)	The District Magistrate (sec. 406[1]).
9. From a sentence under section 480 or section 485 by	

[1] In this section, after '118' the word and figures or '126' should be inserted.

	Appellate Court.
(*a*) any Court other than a Small Cause Court:	The Court to which decrees and orders made in such Court are ordinarily appealable (sec. 486).
(*b*) a Presidency Small Cause Court:	The High Court (sec. 486).
(*c*) any other Small Cause Court:	The Court of Session for the Sessions Division within which such Court is situate (sec. 486).
(*d*) a Registrar or Sub-registrar being also Judge of a Civil Court:	The Court to which the appeal would lie if the sentence were a decree by him in his judicial capacity (sec. 486).
(*e*) a Registrar or Sub-registrar not being also a Judge of a Civil Court.	The District Judge, or, in the Presidency-towns, the High Court (sec. 486).

Section 408 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 and passing any sentence requiring confirmation by the Court of Session shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session. This puts the appeals in question on the same footing as appeals from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

Appeals from acquittals.

Section 417 empowers the Local Government to direct the public prosecutor to appeal to the High Court from orders of *acquittal* passed by any inferior Court[1]. Such a power is desirable in two cases: where there has been, as occasionally happens in India, a gross miscarriage of justice, and where fresh and credible evidence has been brought forward after the acquittal.

Limitation of appeals.

In the case of all appeals under the Code, the Limitation Act fixes periods within which they must be presented. In the case of an appeal from an acquittal, the period is six months from the date of the judgment appealed against.

Section 423, as to the powers of Appellate Courts in disposing of appeals, does not, as was done by the Code of 1872, empower such a Court to enhance any punishment inflicted by the sentence appealed against. Such an enhancement can now be effected only by the High Court on revision (sec. 439).

[1] So far as regards appeals on matter of law from an acquittal, there were precedents for such a proceeding in the English Statute-book. Under 20 & 21 Vic. c. 43, and 42 & 43 Vic. c. 49, sec. 33, 'an appeal from a Court of summary jurisdiction by special case' may be brought by the complainant on the grounds that the order etc. of the Court is erroneous in point of law or is in excess of jurisdiction. Under the New York Cr. Proc. Code, § 518, there is an appeal (1) upon a judgment for the accused on a demurrer to the indictment, and (2) upon an order of the Court arresting the judgment.

In the case of an appeal from an acquittal, section 427 expressly authorises the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail. In the absence of this power, cases had occurred in which criminals, afraid of the result of the appeal, escaped, and thus made the appeal on behalf of the Government of no avail.

Abatement of appeals.

A section (431) suggested by a decision of the Bombay High Court (2 Bom. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 enables the High Court, where justice to the family of the convicted person so requires, to alter his sentence even after the appeal has abated.

Reference.

Chapter XXXII—of reference and revision—empowers Presidency Magistrates and High Court Judges exercising original criminal jurisdiction to refer questions of law (secs. 432–434). This was suggested, according to Sir Fitzjames Stephen, by the English procedure as to reserving cases for the Court for Crown Cases Reserved.. Chapter XXXII also enables certain Courts to call for the records of inferior Courts (sec. 435); and, though they cannot reverse acquittals, they may order persons improperly discharged to be committed (sec. 436), or further inquiries to be made (sec. 437). And it gives the High Courts (sec. 439) ample powers of revision, in exercising which they may enhance sentences. Sub-divisional Magistrates empowered by the Local Government in this behalf are authorised (sec. 435) to call for records of inferior Courts. This is in accordance with the powers of control in other respects which they exercise.

Revision.

Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of showing cause why the committal should not be made. Provision to this effect is made by section 436.

Section 437 enables the High Court, Court of Session, or District Magistrate, on examining any record, to direct 'further inquiry' into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged. The section should be amended so as to show clearly that the 'further inquiry' may be directed even when further evidence has *not* been disclosed.

When the Court of Session or District Magistrate reports for

the orders of the High Court the results of examining any proceeding, and recommends that a sentence be reversed, the Court of Session or District Magistrate may order (sec. 438) its execution to be suspended, and the accused, if in confinement, to be released on bail or on his own bond.

Section 439 (corresponding with the Code of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. It cannot, however, convert an acquittal into a conviction; and no order will be made to the prejudice of the accused, unless he has had an opportunity of being heard.

VIII.—Special Proceedings.

Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: proceedings in the nature of *habeas corpus*.

Europeans and Americans.

Chapter XXXIII contains the special rules applicable to criminal proceedings against Europeans and Americans. The Code of 1872 (sec. 72) and that of 1882 (sec. 443) conferred on European British subjects in the Mufussal a right to be tried exclusively by men of their own race, who were either (*a*) Sessions Judges or (*b*) Magistrates of the first class being also Justices of the Peace. These Magistrates might in such cases pass sentences of imprisonment for not more than three months or fine not exceeding a thousand rupees, or both. This was part of the personal law of Anglo-Indians, just as the rules about searches in zanánás[1], *parda* women[2], and natives of rank[3] were (and still are) part of the personal law of the Hindús and Muhammadans. It worked well, and the disreputable Europeans, to whom alone it applied in practice, were unable to hamper justice by claiming a jury. In February 1883, however, Lord Ripon (having previously sought and obtained the permission of the then Secretary of State for India) caused a Bill to be introduced into the Governor General's Council, which became law as Act III of 1884. This measure enables District Magistrates and Sessions Judges, though Natives, to exercise jurisdiction over European British subjects: and empowers District Magistrates, though Natives, to sentence such subjects to imprisonment for six months, fine extending to Rs. 2000, or both. On the other hand, it enables European British subjects, when tried by a District Magistrate,

[1] Act X of 1882, sec. 48. [2] Code of Civil Procedure, sec. 640.
[3] Ibid. sec. 641.

to claim a jury; and has thus, it is to be feared, practically exempted from punishment the class of offenders to whom it applies. When the Code is next altered section 443 should be expressly applied to cases under section 107.

Section 451 removes some unnecessary differences which formerly existed between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned. In particular, it provides that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or assessors may be made up by Americans as well as Europeans. Under the Code of 1872 (sec. 78), the trial of a European British subject before the Court of Session need not be by jury. But under the same Code (sec. 234) an European or American, not being a British subject, had an absolute right to be so tried. The present Code omits the latter provision.

Lunatics. Chapter XXXIV deals with cases (sec. 464) in which the accused appears to be of unsound mind, and with cases (sec. 469) in which, though sane at the time of inquiry or trial, he appears to have been insane at the time of committing the act of which he is accused. Section 466 must be read with the provision in 14 & 15 Vic., cap. 81, as to the removal to England of a lunatic found to be such in India[1]. The power given by sections 433 and 434 of the Code of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475, to the case of persons who, being found to be insane at the time of trial, are committed to custody. Two useful sections, added by Act X of 1886, empower the Government of India to order criminal lunatics, confined by order of a Local Government, to be removed from one province to another, and enable any Local Government to relieve its Inspector General of Prisons from his functions under sections 472, 473, 474.

Contempts. Chapter XXXV deals with proceedings in cases of certain offences affecting the administration of justice. This chapter (secs. 476, 478, 479, 480, 482) has been expressly made applicable to Revenue Courts.

Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself,—a power of which such Courts were unintentionally deprived by section 472 of the Code of 1872.

Section 480 provides a procedure in certain cases of contempt—omission to produce documents, refusal to take an oath or affirmation, to answer questions, or to sign a statement, and intentional insult or interruption.

[1] See *In re Maltby*, L. R., 6 Q. B. D. 18.

Where the Local Government so directs, Sub-registrars will (sec. 483) be 'Civil Courts' within the meaning of the section. The position and qualifications of Sub-registrars vary in different provinces; but in some parts of India they are Natives of good family and education, well fitted for the exercise of the powers conferred by sections 480 and 482.

Section 486 gives an appeal to the High Court from a conviction in a contempt case by a Court of Small Causes in a Presidency-town.

Section 487 has been redrawn so as to avoid a difficulty which is felt in determining the meaning of the words 'offence committed in contempt of its own authority,' which occur in the corresponding section (473) of the Code of 1872.

Maintenance of wives and children.

Chapter XXXVI, as to the maintenance of wives and children, seems out of place in a Code of Criminal Procedure[1], and is here inserted only because corresponding provisions were placed in the Codes of 1861 and 1872. Sir Fitzjames Stephen[2] thinks that this chapter should be placed in Part IV, as to the Prevention of Offences, 'as,' says he, 'it is a mode of preventing vagrancy, or at least of preventing its consequences.' Unfortunately for this argument, though vagrancy is an offence in England, it is not, and never has been, an offence in India[3].

Habeas corpus.

Chapter XXXVII, as to directions of the nature of a *habeas corpus*, empowers the Presidency High Courts to suppress offences against personal liberty. They were first enacted in Act X of 1875, sec. 148. A somewhat similar jurisdiction is, as we have seen, given, by section 100, to Presidency Magistrates, Magistrates of the first class, and Subdivisional Magistrates, and in the case of certain females, by section 551 to Presidency Magistrates and District Magistrates.

IX.—Supplementary Provisions.

Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses, and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, etc.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings, and, lastly, certain miscellaneous matters.

[1] The Panjáb Chief Court has expressly ruled that an application for maintenance is not a complaint of an offence. The New York Cr. P. Code, §§ 914-926, treats the subject as a special proceeding of a criminal nature.

[2] Hist. Crim. Law, iii. 342.

[3] The European Vagrancy Act is the only Indian law dealing with vagrants; and this carefully abstains from treating vagrancy as a crime.

Public Prosecutor.

Chapter XXXVIII, Public Prosecutor.—No private person can conduct a prosecution without the permission of the Magistrate inquiring into or trying the case (sec. 495). This section, as amended by Act X of 1886, section 13, enables any such Magistrate to permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf, with the previous sanction of the Governor General in Council. But no officer of police is permitted to conduct the prosecution if he has taken any part in the investigation of the offence with respect to which the accused is being prosecuted. The entire exclusion of the police from such a function is, in the opinion of many authorities, inexpedient. With the limitations above described, there will be no fear of intimidation of witnesses or undue influence.

The Advocate General, Standing Counsel, Government Solicitor and any other officer empowered by the Local Government are exempted from the necessity of obtaining permission to conduct prosecutions.

Prosecutions before the Court of Session must (as we have seen) be conducted by a public prosecutor.

Bail.

Chapter XXXIX, Bail.—The Indian law on this subject is contained in the Code, chapter XXXIX, in the second schedule thereto, in Act XXI of 1879, sec. 17 (as to persons arrested in anticipation of extradition), and in special or local laws making certain offences bailable[1]. It states when bail may be taken in case of a non-bailable offence (sec. 497), declares that the amount of the bail bond shall not be excessive (sec. 498), provides for cases in which insufficient sureties have been accepted (sec. 501); and, lastly, deals with the discharge of sureties (sec. 502). The powers here given to police-officers have been expressly confined to officers in charge of police-stations.

Commissions.

Chapter XL, Commissions for Examination of Witnesses.—The Code, unlike the English criminal law, here provides for the taking of evidence on commission. Such commissions, as Straight J. has observed[2], should be issued only in extreme cases of delay, expense, or inconvenience[3]. The provisions of the former law have here been

[1] See, for instance, the Coroners Act, IV of 1871, sec. 27; the Customs Act, VIII of 1878, sec. 175; the Madras Salt Act, Mad. Act I of 1882, sec. 11; and Mad. Reg. I of 1830, sec. 4 (3), as to persons abetting a *sati*. See also 26 Geo. III. c. 57. sec. 16, as to taking bail in England in the case of persons accused of certain offences committed in India.

[2] 5 All. 92. So in New York the Courts have held that the power to issue a commission is an innovation of the common law, and must be strictly pursued.

[3] They were granted in 4 Cal. 20 and 6 Bom. 285; but refused in 8 Cal. 896, 5 All. 92, and 6 All. 224. As to Speakers' warrants for examination of witnesses in India, see 13 Geo. III. c. 63. sec. 42.

amended in four respects. Where the witness resides in a Native State, power has been given (sec. 503) to issue the commission to the Political Agent or other local officer representing the British Government. Section 505 requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission. Where a subordinate Magistrate wishes for a commission, he will (sec. 506) apply to the District Magistrate, and not (as formerly) to the Sessions Judge: this relieves the Court of Session of a duty which can be more conveniently performed by the District Magistrate. And power is expressly given (sec. 508) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

Special rules of evidence.

Chapter XLI contains some special rules as to evidence, supplementing those in the Evidence Act. The report of any Chemical Examiner or Assistant Chemical Examiner to Government may now be used in evidence (sec. 510) in any proceeding under the Code, not merely, as under the Code of 1872, in any criminal trial. And in proving a previous conviction or acquittal, the new Code (sec. 511) requires evidence as to identity of the accused person with the person so convicted or acquitted.

Bonds.

Chapter XLII contains some provisions generally applicable to bonds executed under the Code. The procedure for recovering the penalty from the principal in the case of security to keep the peace provided by Act X of 1872, sec. 502, is now applicable to all such bonds.

Disposal of property.

Chapter XLIII, Disposal of property. When an inquiry or trial is concluded, the Court is empowered (sec. 517) to make such order as it thinks fit for the disposal of any document or other property produced before it regarding which an offence appears to have been committed, or which has been used to commit an offence. In partial accordance with a rule of the High Court at Bombay, section 517 declares that, when a High Court or Court of Session makes such an order, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct the order to be carried into effect by the District Magistrate, not the 'committing Magistrate,' who might have been transferred before the order was made.

Orders under section 517 made in appealable cases will not (except where the property is live-stock, or is subject to speedy and natural decay) be carried out until the time allowed for appealing has expired, or, if an appeal is presented in due time, until the appeal is disposed of.

Where an innocent purchaser buys stolen property and restores it to the lawful possessor, provision is made (sec. 519) for payment

of the price out of money found on the convicted thief. This is in accordance with 30 & 31 Vic., cap. 35. sec. 10. But there is no provision, like 35 & 36 Vic., cap. 93. sec. 30, for the restitution of property which has been pawned with a pawnbroker.

Section 521 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272–275 of the same Code.

Power to restore immoveable property to any one dispossessed of it by criminal force, is conferred by section 522.

Transfer of criminal cases.

Chapter XLIV enables the High Court (sec. 526) and the Governor General in Council (sec. 527) to order any offence to be inquired into or tried by any court, otherwise competent, but not empowered under sections 177–184, and to transfer criminal cases from one Court to another. And section 528 empowers District and Subdivisional Magistrates to withdraw, recall, or refer such cases. Section 526 provides, in accordance with a minute of Sir B. Peacock, cited 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported (except where the applicant is the Advocate General) by affidavit or affirmation.

Irregular proceedings.

Chapter XLV contains provisions as to the cases in which irregularities shall, and in which they shall not, vitiate the proceeding in which they occur. Tender of pardon under Chapter XXVI, and sale of property under section 524 or section 525, have been added to the list of proceedings which will not be set aside merely on the ground of the Magistrate not being duly empowered.

Miscellaneous.

Chapter XLVI comprises some miscellaneous matters, of which the following were new. Power is given (sec. 541) to the Local Government to fix places of imprisonment or custody. Moneys (other than fines) payable by virtue of any order made under the Code will be recoverable as if they were fines (sec. 547). The power to compel restoration of abducted females, which formerly existed only in the Presidency-towns, has been extended (sec. 551) to District Magistrates. Power is given to the High Courts (sec. 553) to make rules for the inspection of the records of subordinate Courts. No Judge or Magistrate shall, except with permission of the Appellate Court, try or commit for trial any case to or in which he is a party or personally interested otherwise than as a municipal commissioner. Nor shall he hear an appeal from any judgment or order passed or made by himself (sec. 555). The Code contains no clause equivalent to Act I of 1868, sec. 5, as to

the recovery of fines, although similar provisions were contained in each of the Codes now consolidated (X of 1872, sec. 309, X of 1875, sec. 107, IV of 1877, sec. 12). The matter is now provided for by the Penal Code, sec. 64, amended by Act VIII of 1882, sec. 2.

Schedules.

Schedules II (Tabular Statement of Offences) and V (Forms), which correspond respectively with Schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the provincial Courts, but to those of the Presidency Magistrates. The latter schedule now contains no less than 53 forms, which had, before their incorporation in the present Code, stood the test of practices in the Presidency of Madras and the Panjáb. The Code of 1872 contained only a set of forms of charges and nine forms of summonses, warrants, bonds, and the instruments improperly called recognisances.

The offence of voluntarily causing hurt has been made one for which the police may not arrest without a warrant. A like change has been made as to voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave it. The numerous investigations by the police into charges of 'hurt,' which the former law rendered necessary, distracted the attention of the police-force from more important duties, and resulted in little good to the public.

The offence of adultery has been made triable by a Presidency Magistrate and a Magistrate of the first class.

The paragraph relating to mischief by fire with intent to cause damage has been altered in accordance with the amendment of section 435 of the Penal Code by Act VIII of 1882, sec. 10. This alteration was made in order to check the offence, which was very common in some parts of the country, of setting fire to garnered crops. A cultivator might have the whole of his crop destroyed in this way, and yet if its value be less than Rs. 100 (as is often the case) he could not obtain the aid of the police to arrest the offender without a warrant from a Magistrate.

The lists of powers contained in section 21 et seq. of Act X of 1872 have been thrown into Schedules III (Ordinary Powers of Provincial Magistrates) and IV (Additional Powers with which Provincial Magistrates may be invested).

The Bill which afterwards became Act X of 1882 was published in the *Gazette of India* for the 5th, 12th and 19th April 1879, and circulated to the various Local Governments, with a request that

it might be examined by selected local officers. This was done, and the result of the examination is contained in a thick folio volume. The Bill was then revised with reference to this mass of criticism, and to the cases reported since it was framed; and it might almost be said, in the form in which it was referred to a Select Committee, to be the work of the whole body of Indian Judges and Magistrates rather than of any individual or Department.

Amendments made by Select Committee.

The Select Committee, which consisted of Mr. (now Sir Rivers) Thompson, the late Mr. Gibbs, Mr. H. Reynolds, Jotíndra Mohan Tagore, Mr. Louis Forbes, Mr. C. T. Crosthwaite, and the writer, made eighty-five amendments of the substance of the law; but of these only three are sufficiently important to require special mention here.

Examination of accused.

First, the Committee thought that the then law gave too great latitude to the Courts with regard to the examination of an accused person. The object of such examination is, or ought to be, to give the accused an opportunity of explaining any circumstances which may tend to criminate him, and thus to enable the Court, in cases where he is undefended, to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. The Committee therefore limited the power of interrogating the accused by prefixing to the first paragraph of section 342 the words 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' The accused should always have the opportunity of explaining, and the Code therefore requires the Court to question him generally for that purpose before he enters on his defence.

Whipping.

Secondly, the Committee amended the law as to whipping. It provided in section 32 that no Magistrate of the second class should pass a sentence of whipping unless specially empowered in that behalf by the Local Government: that whipping should be inflicted with a light ratan not less than half-an-inch in diameter; and that it should never be inflicted on any person whom the Court considered to be more than forty-five years of age.

Enhancement of sentences on appeals.

Thirdly, the Committee abolished the power, which Appellate Courts had under the Code of 1872, to enhance sentences on appeals presented by accused persons. The existence of such a power tended to deter convicted, but, possibly, innocent persons from presenting appeals, and thus to deprive the lower Courts of the control which could only be effectively exercised over them by means of an unhampered system of appeal.

Number of substantial

The Bill as introduced made a hundred and twelve amendments

of the substance of the law. The eighty-five amendments just mentioned or referred to raised the number to 197[1]. amendments made by present Code.

The new Code became law on the 6th of March, 1882; but it did not come into force till 1st January, 1883,—ten years from the date on which the Code of 1872 began to operate. This was five years after the date on which, according to Sir Fitzjames Stephen, the Code should have been re-enacted. 'I should say,' he writes in his minute on the administration of justice in British India, 'that this process ought to be repeated at least once in every five years for every important Act.'

Excluding the special provisions of the Acts relating respectively to Coroners, criminal tribes, inquiries into the behaviour of public servants[2], and the organisation of the police, the Code is now a complete body of criminal procedure. It combines the merits of the English, or accusatory, system, with some of the facilities for arriving at the truth afforded by the continental, or inquisitorial, systems. No pains have been spared to render its provisions plain and practical; and though it has been thought necessary to pass three amending Acts, the principal changes made thereby are due rather to politico-sentimental considerations than to any difficulty which the Courts have found in working the Code.

Of these Acts, the first (No. III of 1884) has already been noticed. Act III of 1884. The Bill as introduced (1) made the following persons, being Magistrates of the first class, eligible for the office of justice of the peace, viz. covenanted civilians, members of the Native Civil Service constituted under 33 Vic. c. 3, Assistant Commissioners in non-regulation provinces and Cantonment Magistrates, (2) made Sessions Judges and District Magistrates *ex officio* justices of the peace, (3) repealed in sec. 443 of the Code the words 'and an European British subject,' (4) repealed the provision in sec. 444 that no Judge presiding in a Court of Session should exercise jurisdiction over an European British subject unless he himself was an European British subject, (5) repealed sec. 450 and the last sixteen words of sec. 459. But the only important changes made by the Act as passed were the repeal of the section (450) which provided for the case where the Judge of the Sessions division within which a European British The so-called Ilbert Bill.

[1] It is difficult, therefore, to understand how Sir Fitzjames Stephen could have written thus of the Code of 1882: 'It differs from the Act of 1872 principally in the circumstance that it does apply to the High Courts as well as the other criminal Courts in India, and that certain alterations have been made in the arrangement of the Act of 1872, besides *some few* alterations in its substance;' History of the Criminal Law, iii. 324.

[2] Act XXXVII of 1850. The New York Code of Criminal Procedure contains a Part (III) relating solely to this subject of judicial proceedings for the removal of public officers.

subject was ordinarily triable was a Native, and the substitution for section 451 of three sections enabling a European British subject—

(*a*) in a trial before the Sessions Court with the aid of assessors, to require that not less than half their number shall be Europeans or Americans, or both Europeans and Americans; and

(*b*) in a trial before a District Magistrate, to claim that the trial shall be by a jury similarly composed.

Act X of 1886.

The second of these Acts, No. X of 1886, amended the drafting of sections 31, 34, 110, 162, 266, 269, 398, 401 and 510. It extended sections 55 and 56 to the police in the towns of Calcutta and Bombay. It extended to Chief Presidency Magistrates the provisions as to endorsement in sections 88 and 514. It allowed the Local Government to regulate the practice of submitting final police reports through a superior officer of police. It also allowed the Local Government, with the previous sanction of the Governor General in Council, to prescribe the rank of the police officer who may conduct prosecutions. It empowered the Governor General in Council to direct criminal lunatics confined by order of the Local Government to be removed from one province to another. It empowered the Local Government to relieve the Inspector General of jails of his functions under sections 472, 473 and 474. It provided for the removal to a criminal jail of accused or convicted persons who are in confinement in a civil jail and their return to the civil jail. And it forbade officers concerned in sales under the Code to purchase or bid for the property sold. There is a corresponding section (292) in the Code of Civil Procedure. All these changes are improvements.

Act V of 1887.

The third Act, V of 1887, merely amends the definition of 'Officer in charge of a police station,' and in section 312 substitutes the word 'four' for the word 'two.' The object of the latter change is to increase the number of names in the special jurors' list in each Presidency-town. It is to be hoped that the result will not be to lessen seriously the number of respectable and intelligent persons available as common jurors.

Suggested amendments of the Code.

When the Code is next altered, it would be well to repeal and re-enact, as a separate law, the chapter on the maintenance of wives and children; to insert sections as to the mode of pleading the defences of want of jurisdiction, previous acquittal, previous conviction, and limitation; to alter the place of section 403; to make in sections 110, 145, 244, 350, 406, 437, and 443 the amendments above suggested; to explain and illustrate the expression 'presumed or actual partiality' in section 278; and to correct the clerical errors, mentioned infra, in sections 362, 551, and 552.

THE CODE OF CRIMINAL PROCEDURE, 1882.

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CHAPTER XLVI.

MISCELLANEOUS.

ACT No. X OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 6th March, 1882.)

AS AMENDED BY ACTS III OF 1884[1], X OF 1886, AND V OF 1887.

An Act to consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

CHAPTER I.

1. This Act may be called 'The Code of Criminal Procedure, 1882:' and shall come into force on the first day of January, 1883; Short title. Commencement.

It extends to the whole of British India[2]; but, in the absence of any specific provision to the contrary[3], nothing herein contained shall affect any special or local law now in force[4], Local extent.

[1] All references to the Code of 1882 made in enactments passed before or after 25th Jan. 1884 are to be read as if made to that Code as amended by Act III of 1884; see sec. 14 of that Act.

[2] 10 Bom. 258, and to the places outside British India mentioned infra in Appendix A. As to the personal application of the Code outside British India, see above, p. 5, 9 Bom. 288, 333, and sec. 458 infra.

[3] See secs. 54, 55, 56, 68, 83–86, 95, 102, 127, 374–376, and Schedule II, col. 3.

[4] e.g. Act XXXVII of 1855, which is still in force in the Santál Parganas, 12 Cal. 536.

or any special jurisdiction or power[1] conferred, or any special form of procedure prescribed[2], by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta[3], Madras and Bombay[3], or the police in the towns of Calcutta and Bombay;

(*b*) any officer duly authorised to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively[4];

(*c*) heads of villages in the Presidency of Fort St. George[5]; or

(*d*) village police-officers in the Presidency of Bombay[6]:

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras[7].

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications etc. under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately

[1] The power to punish contempts, vested in the High Courts, as superior Courts of record, by the common-law of England, seems saved by this provision, L. R., 10 Ind. App. 179, where, however, the point was not decided. The Lower Burma Gaols Delivery Act, XVI of 1886, is, so far as is consistent with the terms thereof, to be construed as one with the Code of Criminal Procedure.

[2] See, for example, Act V of 1869, the Indian Articles of War.

[3] See Ben. Act IV of 1866, Madras Act VIII of 1867, and (as to Bombay) Act XIII of 1856.

[4] See Bom. Act III of 1867 (*to make provision for the administration of Military Cantonments in the Bombay Presidency*). The old Regulation XXII of 1827, secs. 3, 22, 33, and Act IV of 1854 may still be in force in cantonments (if any) in which Bom. Act III of 1867 is not in force.

[5] See Mad. Regs. XI of 1816, secs. 10–14, and IV of 1821, sec. 6, under which Village-headmen have jurisdiction to try petty cases of assault, affray, abuse and theft, to search for stolen property, to hold inquests, and arrest suspected murderers.

[6] See Bom. Act VIII of 1867, Bom. Reg. XII. of 1827, sec. 37.

[7] The Coroners Act, IV of 1871, is therefore undisplaced. All the rest of the Code applies to the police in the town of Madras.

before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

References to former Code and other repealed enactments.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts.

In every enactment passed before this Code comes into force the expressions 'Officer exercising (or "having") the powers (or "the full powers") of a Magistrate,' 'Subordinate Magistrate, first class,' and 'Subordinate Magistrate, second class,' shall respectively be deemed to mean 'Magistrate of the first class,' 'Magistrate of the second class,' and 'Magistrate of the third class;' the expression 'Magistrate of a division of a district' shall be deemed to mean 'Sub-divisional Magistrate;' the expression 'Magistrate of the district' shall be deemed to mean 'District Magistrate,' and the expression 'Magistrate of Police' shall be deemed to mean 'Presidency Magistrate.'

Interpretation-clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

'Complaint:'

(*a*) 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police-officer[1]:

'Investigation:'

(*b*) 'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorised by a Magistrate in this behalf[2]:

'Inquiry:'

(*c*) 'Inquiry' includes every inquiry conducted under this Code by a Magistrate or Court:

[1] nor a complaint to the police, 6 All. 96, nor information given to a police-officer.

[2] See sec. 202, infra.

'Judicial proceeding:' (*d*) 'Judicial proceeding' means any proceeding in the course of which evidence is or may be legally[1] taken[2]:

'Writing' and 'written:' (*e*) 'Writing' and 'written' include 'printing,' 'lithography,' 'photography,' 'engraving,' and every other mode in which words or figures can be expressed on paper or on any substance:

'Sub-division:' (*f*) 'Sub-division' means a sub-division made under this Code of a District:

'Province:' (*g*) 'Province' means the territories for the time being under the administration of any Local Government:

'Presidency-town:' (*h*) 'Presidency-town' means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

'High Court:' (*i*) 'High Court' means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

In other cases 'High Court' means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

'Chief Justice:' (*j*) 'Chief Justice' includes also the senior Judge of a Chief Court:

'Advocate General:' (*k*) 'Advocate General' includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

'Clerk of the Crown:' (*l*) 'Clerk of the Crown' includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

'Public Prosecutor:' (*m*) 'Public Prosecutor' means any person appointed under section 492[3], and includes any person acting under the directions of a Public Prosecutor; and any person conducting a

[1] See 1 All. 1, 7.

[2] This does not include the proceedings of a Magistrate under sec. 88, infra, 6 All. 487.

[3] See also sec. 270.

prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

'Pleader:' (*n*) 'Pleader' used with reference to any proceeding in any Court, means a pleader authorised under any law for the time being in force[1] to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorised, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

'Police-station:' 'Officer in charge of a police-station:' (*o*) 'Police-station' means any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and 'Officer in charge of a police-station' includes, when the officer in charge of the police-station is absent from the station-house[2] or unable from illness to perform his duties, the police-officer present at the station-house[2] who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present:

'Offence:' (*p*) 'Offence' means any act or omission made punishable by any law for the time being in force:

'Cognisable offence:' 'Cognisable case:' (*q*) 'Cognisable offence' means any offence for, and 'cognisable case' means a case in, which a police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

'Non-cognisable offence:' 'Non-cognisable case:' 'Non-cognisable offence' means an offence for, and 'non-cognisable case' means a case in, which a police-officer, within or without the Presidency-towns, may not arrest without warrant:

'Bailable offence:' 'Non-bailable offence:' (*r*) 'Bailable offence' means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence:

'Warrant-case:' (*s*) 'Warrant-case' means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

[1] See Act XVIII of 1879, amended by Act IX of 1884.

[2] Act V of 1887, sec. 1.

'Summons-case:' (*t*) 'Summons-case' means a case relating to an offence not so punishable:

'European British subject:' (*u*) 'European British subject' means—

(1) any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britian and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grandchild of any such person by legitimate descent:

'Chapter:' 'Schedule:' (*v*) 'Chapter' means a chapter of this Code; and 'Schedule' means a schedule hereto annexed:

'Place.' (*w*) 'Place' includes also a house, building, tent and vessel.

Words referring to acts. Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code[1].

Trial of offences under Penal Code. **5.** All offences under the Indian Penal Code[2] shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law[3] shall be

Trial of offences against other laws. inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

[1] And of course all expressions, such as 'Magistrate,' 'Local Government,' defined in the General Clauses Act (vol. i. of this work, p. 487) and occurring in this Code, have the meaning ascribed to them by Act I of 1868.

[2] A contempt of the High Court of Calcutta, Madras, and Bombay by a libel published out of Court when the Court was not sitting is not included in these words, although the contempt may include defamation, L. R., 10 Ind. App. 179: 10 Cal. 109 (S. C.).

[3] These words do not include such a contempt, for which no provision is made by the Code.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

6. Besides the High Courts[1] and the Courts constituted under any law other than this Code for the time being in force[2], there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session:

II.—Courts of Presidency Magistrates:

III.—Courts of Magistrates of the first class:

IV.—Courts of Magistrates of the second class:

V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Sessions Divisions:

Districts.

7. Every Province (excluding the Presidency-towns[3]) shall be a Sessions Division, or shall consist of Sessions Divisions:

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Power to alter Divisions and Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Existing Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Presidency-towns.

Every Presidency-town[3] shall, for the purposes of this Code, be deemed to be a District.

Power to sub-divide Districts.

8. The Local Government may divide any District outside the Presidency-towns[3] into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

[1] See sec. 4, cl. (*i*), supra. [2] See p. 6, supra. [3] Sec. 4, cl. (*h*), supra.

Existing Sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

Court of Session.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges [1], and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

[1] 9 Bom. 164.

Such Magistrates shall be called Sub-divisional Magistrates[1].

The Local Government may delegate its powers under this section to the District Magistrate. Delegation to District Magistrate.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns. Special Magistrates.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit. Benches of Magistrates.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as Powers exercisable by Bench in absence of special direction.

[1] This includes Cantonment Magistrates, Act III of 1880, sec. 3.

practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class[1].

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session[2].

Subordination of Magistrates and Benches to District Magistrate;

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate[3] to the District Magistrate[4], and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Sub-divisional Magistrate.

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate[3] to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate[3] to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate[3] to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the

[1] That an appeal lies under sec. 407 from a conviction by a Bench invested with second or third class powers, see 9 Mad. 36.

[2] See Bombay Gazette, 1881, p. 9, cited by Henderson, pp. 17, 18.

[3] i. e. inferior in rank, 9 Bomb. 103.

[4] See the powers given to the District Magistrate by ss. 350, 406, 407, 435, 514, 515.

Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town[1] for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues[2].

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877[3], was exercised in that town by the Court of Petty Sessions[4]:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Justices of the Peace for the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns[1],

[1] Sec. 4, cl. (*h*), supra.

[2] Act XII of 1875.

[3] The day on which the Presidency Magistrates Act (IV of 1877) came into force.

[4] See p. 6, note 2, supra.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India[1]. Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving[2]; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

[1] 13 Geo. III, c. 63, sec. 38.

[2] Inserted by Act III of 1884, sec. 1.

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government: Suspension and removal of Judges and Magistrates.

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it. Suspension and removal of Justices of the Peace.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognisable by each Court.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session, or by any other Court[1] by which such offence is shown in the eighth column of the second schedule to be triable. Offences under Penal Code.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court[2]. Offences under other laws.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

[1] The provision as to the other Courts does not cut down or limit the jurisdiction of the High Court or Court of Session, 8 All. 667.

[2] See for example the Railway Act, IV of 1879, sec. 50, and the Registration Act, III of 1877 (amended by XII of 1879, sec. 106), sec. 83.

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death[1].

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorised by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge[2] may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation[3], passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment[4] for a term not exceeding two years, including such solitary confinement as is authorised by law[5]; Fine not exceeding one thousand rupees; Whipping.

[1] See 10 Cal. 85, and sec. 209 infra.

[2] See 9 Bom. 164, and chap. xxxii infra.

[3] Act X of 1886, sec. 1. Under the Penal Code, sec. 59, a sentence of seven years' imprisonment can be commuted to transportation for seven years.

[4] of either description as defined in the Penal Code; see the General Clauses Act, supra, vol. i. p. 489.

[5] See the Penal Code, secs. 73, 74.

(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

Power to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment[1] in default of payment of fine as is authorised by law in case of such default: provided that the term is not in excess of the Magistrate's powers under this Code[2]:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

But any sentence of imprisonment for a term exceeding

[1] but not transportation, 5 Mad. 28.

[2] See the Penal Code, sec. 65, and 10 Mad. 165.

four years [1], and any sentence of transportation, shall be subject to confirmation by the Sessions Judge [2].

Sentence in cases of conviction of several offences at one trial.

35. When a person is convicted, at one trial [3], of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence [4].

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their 'ordinary powers.'

[1] 6 Cal. 624.

[2] Act X of 1886, sec. 2.

[3] This section does not include the case of separate trials held on the same day for separate offences committed by the same person, Madras H. C. Progs., 5 June, 1879, cited by Henderson.

[4] 10 Bom. 494. A Magistrate must not split up an offence for the purpose of giving himself jurisdiction over the parts which he would not have had over the whole, and thus deprive the prisoner of an appeal, 4 Cal. 18.

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrate's investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

Continuance of powers of officers transferred.

40. Whenever any person holding an office in the service of Government who has been invested[1] with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Powers may be cancelled.

41. The Local Government[2] may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

[1] See 2 Cal. 127.

[2] Formerly District Magistrates had this power. But powers once conferred should not be lightly withdrawn, and the Select Committee deemed it expedient that District Magistrates should not be able to withdraw powers already conferred on their subordinates.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

42. Every person is bound [1] to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or police-officer is authorised to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray [2].

Aid to persons other than police, executing warrant.

43. When a warrant is directed to a person other than a police-officer [3], any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention [4].

[1] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 187.

[2] As to riots and affrays, see the Penal Code, secs. 146, 149. The law does not require persons to assist the police in extinguishing fires.

[3] See sec. 78, infra.

[4] For the punishment annexed to breach of this obligation, see the Penal Code, secs. 176, 202.

Village-headmen, land-holder and others to report certain matters.

45. Every village-headman[1], village-watchman[2], village-police-officer[3], owner or occupier of land[4], and the agent[5] of any such owner or occupier, and every officer[6] employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station[7], whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, any non-bailable offence in or near such village;

(*d*) the occurrence therein[8] of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section 'village' includes village-lands[9].

[1] See also Mad. Reg. XI of 1816, secs. 8, 9: Mad. Reg. I of 1830, sec. 3: the Forests Act, VII of 1878, sec. 78: Ben. Reg. XVII of 1829, sec. 3: the Criminal Tribes Act, XXVII of 1871, sec. 21: and (in Burma) Act II of 1880, secs. 14, 15.

[2] See also in the N. W. P., Act XVI of 1873, sec. 8: XVIII of 1876, sec. 34 (Oudh): and the Forests Act, VII of 1878, sec. 78: and the Criminal Tribes Act, XXVII of 1871, sec. 21.

[3] See in Bengal, Act V of 1861, secs. 21, 47: Ben. Act VI of 1870: in Madras, Act XXIV of 1869, sec. 1: in Bombay, Bom. Acts VII and VIII of 1867, and Bom. Reg. XII of 1827, sec. 37: in the N. W. P., Act XVI of 1873: in Oudh, Act XVIII of 1876.

[4] That residence in another's dwelling-house does not make the resident an 'occupier of land,' see 23 Suth. Cr. 60.

[5] This does not include a khazánchí, but may include a díwán whose master is absent, 4 Cal. 603.

[6] whether he is, or is not, a native of India. The words do not include a village-accountant or a village-munsif's peon, 1 Mad. 266.

[7] Sec. 4 cl. (*o*), supra, p. 59.

[8] i. e. in the village referred to in cl. (*a*). That the finding of a human body in a village, under circumstances indicating that the death was sudden or unnatural, justifies the inference that the death took place 'therein,' and that in order to obtain a conviction under sec. 176 of the Penal Code the prosecution need not prove that the death actually took place 'therein,' see 11 Cal. 619, dissentiente Mitter J.

[9] Two of the High Courts have expressed an opinion that the provisions of this section should not be put in force against *A* where the police have actually obtained the requisite information from *B*, 4 Cal. 623: 7 Mad. 436.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action [1].

Resisting endeavour to arrest.

If such person forcibly resists [2] the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest [3].

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death [4], or with transportation for life [5].

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and

[1] Where the arrest is under a warrant, see sec. 80, infra.

The arrest may be made on any day and at any time—even on Sunday or at night.

[2] For the punishment annexed to such resistance see the Penal Code, secs. 224, 225.

[3] Thus a chaukídár may wound a fugitive housebreaker, if that amount of violence be necessary to secure his person. The question is, 'whether the means employed to stop the fugitive were such as an ordinarily prudent man would make use of, who had no intention of doing any serious injury,' 2 Suth. Cr. R. 9, per Glover J.

[4] See the Penal Code, secs. 121, 132, 194, 302, 303, 305, 307, 396.

[5] See the Penal Code, secs. 75, 121, 121A, 122, 125, 125A, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand[1] of admittance duly made, he cannot otherwise obtain admittance[2]:

Breaking open zanáná.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any police-officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein[3].

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape[4].

Search of arrested persons.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him[5].

[1] *Launock* v. *Brown*, 2 B. & Ald. 592.

[2] As to breaking doors, see 3 Moore, I. A. 164, and Foster's Discourse on Homicide, cited ibid. 173, 174.

[3] *White* v. *Wiltshire*, Cro. Jac. 553: 2 Hawk. P. C. chap. xiv. sec. 11. The provisions of secs. 47, 48, 49 apply to a retaking after an escape or rescue: see sec. 67, infra.

[4] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 220, and the Police Act, V of 1861, sec. 29.

[5] See secs. 53 and 523, infra.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When police may arrest without warrant.

54. Any police-officer[1] may, without an order from a Magistrate and without a warrant, arrest—

first—any person who has been concerned in any cognisable offence[2] or against whom a reasonable complaint has been made, or credible information has been received[3], or a reasonable suspicion exists, of his having been so concerned[4];

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code[5] or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property[6] and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

[1] This does not include a village chaukídár, 3 All. 60.

[2] Sec. 4, cl. (*q*), *supra*.

[3] 10 Bom. 511.

[4] See also sec. 57 *infra*, and the Acts relating to Arms (XI of 1878, sec. 12); Cantonments (III of 1880, sec. 17); Criminal Tribes (XXVII of 1871, sec. 20); Cruelty to Animals (Ben. Act. III of 1869, sec. 1); Excise (Act XXII of 1881, sec. 27, and Ben. Act VII of 1878, secs. 40, 41); Gambling (Act III of 1867, sec. 13; Ben. Act II of 1867, sec. 11, etc.); Railways (Act IV of 1879, secs. 48, 49); Roads and streets (V of 1861, sec. 34); Salt (Ben. Act VII of 1864, sec. 24); Mad. Act I of 1882, sec. 4; Bom. Act VII of 1873).

[5] Sec. 87.

[6] Penal Code, sec. 415.

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service [1].

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, etc.

55. Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognisable offence [2]; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself [3]; or

(*c*) any person who is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

This section applies to the police in the towns of Calcutta and Bombay [4].

Procedure when police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

This section applies to the police in the towns of Calcutta and Bombay [4].

Refusal to give name and residence.

57. When any person in the presence of a police-officer commits or is accused of committing a non-cognisable offence [2], and refuses on demand of a police-officer to give his name

[1] See the Army Discipline and Regulation Act, 44 & 45 Vic., c. 58, secs. 154, 163 (1) (*i*), sch. 4. See also the Indian Articles of War, Act V of 1869.

[2] See sec. 4, cl. (*g*).

[3] As to the apprehension of lunatics, see Act XXXVI of 1858; of vagrants, IX of 1874, sec. 4.

[4] Act X of 1886, sec. 3.

and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, pursue such person into any place in British India[1].

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognisable offence[2], or who has been proclaimed as an offender[3];

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a police-officer; or, in the absence of a police-officer, take such person to the nearest police-station.

If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognisable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Person arrested to be taken before Magistrate or

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person

[1] As to arrests in a foreign country, see Act XXI of 1879.

[2] See sec. 4, clauses (*q*) and (*r*), supra.

[3] Where the Inland Emigration Act is in force, the employer, or any person acting on behalf of the employer, of a deserting labourer may arrest him without warrant or police assistance (Act I of 1882, sec. 172). Private persons may also arrest persons conveying arms etc. under suspicious circumstances, Act XI of 1878, sec. 12. Power to arrest is also given by special and local Acts to certain officers and employés connected with canals, customs, excise, forests, opium, railways, salt, and tramways.

arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station. Officer in charge of police-station.

61. No police-officer shall detain in custody a person arrested without warrant[1] for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Person arrested not to be detained more than 24 hours.

62. Officers in charge of police-stations[2] shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise. Police to report apprehensions.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate. Discharge of person apprehended.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. Offence committed in Magistrate's presence.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. Arrest by or in presence of Magistrate.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India. Power, on escape, to pursue and retake.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

[1] As to persons arrested under a warrant, see sec. 81.

[2] Sec. 4, cl. (*o*), *supra*.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing [1] in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule direct [2].

Summons by whom served.

Such summons shall be served by a police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay [3].

Summons how served.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons [4].

Signature of receipt for summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

[1] Sec. 4, cl. (*e*), *supra*, p. 58.

[2] As to the form of the summons, see 5 All. 8, per Straight J.

[3] As to Madras, see sec. 1.

[4] Merely showing the summons is not enough, 5 Bom. H. C., Cr. Ca. 20.

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court[1].

Continuance of warrant.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time

[1] It need not be sealed by the presiding officer.

and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody[1].

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognisance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily[2] be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, etc.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge[3].

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

[1] In lieu of executing the bond, money or Government promissory notes may be deposited under sec. 513.

[2] 5 Ben. 274.

[3] For the punishment annexed to breach of this obligation, see the Penal Code, sec. 187.

Warrant directed to police-officer.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant[1].

Person arrested to be brought before Court without delay.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

Warrant directed to police-officer for execution outside jurisdiction.

84. When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to

[1] The police-officer should therefore not attempt to arrest unless he has the warrant in his possession, 5 All. 318. As to the protection of a police-officer authorised by the warrant to arrest *A*, who arrests *B* in good faith believing him to be *A*, see the Penal Code, sec. 79. The same section protects a police-officer who without a warrant arrests *A*, believing in good faith that *A* has committed a cognisable offence, when in fact no such offence has been committed.

the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer is executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay[1].

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: provided that if the offence is bailable[2], and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond[3] to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded[4] or is concealing

[1] As to Madras, see sec. 1.
[2] Sec. 4, cl. (*r*), supra.
[3] See the form, Sched. V. No. 3.
[4] 4 Mad. 393.

himself so that such warrant cannot be executed, such Court may publish a written[1] proclamation[2] requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows :—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village ; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment[3] of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorise the attachment of any property belonging to such person within the district in which it is made ; and it shall authorise the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate or Chief Presidency Magistrate[4] within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure ; or

(*b*) by the appointment of a receiver ; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or

[1] Sec. 4, cl. (*e*).

[2] See the form, Sched. V. No. 4. For the punishment for not attending in obedience to the proclamation, see Penal Code, sec. 174.

[3] See forms, Sched. V. No. 6.

[4] Act X of 1886, sec. 4.

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit[1].

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government[2]; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to

[1] The law makes no provision for the Magistrate investigating the claims of third persons to property which has been attached. His proceedings under this section are, therefore, not 'judicial proceedings' in the sense of sec. 4, cl. (*d*). See 6 All. 487.

[2] 9 Cal. 863. So long as the attachment by the Magistrate continues, no title can be conferred by attachment and sale subsequently made in execution of a money-decree, ibid.

enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him [1].

D.—Other rules regarding processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant [2] for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded [3] or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in chap. vi generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

[1] Any Magistrate may order delivery, Sched. III. i. cl. (5).

[2] See form, Sched. V. No. 7.

[3] 4 Mad. 393.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station [1], considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124 [2], or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

[1] Sec. 4, cl. (*o*), supra.

[2] which regulate the giving of evidence as to affairs of State and the disclosure of official communications. Persons summoned to produce documents do not become witnesses by merely producing them. See the Evidence Act, sec. 139.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained [1].

Nothing herein contained shall authorise any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities [2].

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant [3] the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, etc.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged docu-

[1] See sec. 101.

[2] See secs. 101, 550 (*b*).

[3] See the form, Sched. V. No. 8.

ments, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorise any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant,

unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence[1], he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper[2].

D.—General provisions relating to searches.

Direction etc. of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84[3] shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all

[1] See the Penal Code, secs. 339, 340.

[2] For the power of the High Courts in Calcutta, Madras and Bombay to issue directions in the nature of a *habeas corpus*, see sec. 491, infra. For the powers of Presidency Magistrates and District Magistrates as to the liberation and restoration of females, see sec. 551.

[3] As to executing warrants of arrest.

things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Power to impound document.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant[1].

[1] See secs. 96–99, supra.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting[1], assault[2] or other breach of the peace, or of abetting[3] the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property[4], is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class[5],

and such Court is of opinion that it is necessary to require such person to execute a bond[6] for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix[7].

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void[8].

[1] Penal Code, sec. 146.
[2] Penal Code, sec. 351.
[3] Penal Code, sec. 107.
[4] See 2 All. 351.
[5] or a Bench of Magistrates, of which one is a Magistrate of the first class, sec. 15.
[6] See the form, Sched. V. No. 10. As to the period for which the security is required, see sec. 120.
[7] That a deposit of money or Government Promissory notes may be taken in lieu of the bond, see sec. 513. If the accused neither executes the bond nor makes the deposit, he may be imprisoned under sec. 123.
[8] N. W. P. 1875, p. 375.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information[1] that any person[2] is likely to commit a breach of the peace, or to do any wrongful[3] act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix[4].

Procedure of Magistrate etc. not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

[1] This must be 'clear and definite,' 'directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet,' 6 All. 30, per Straight Offg. C.J., and see ibid. 136. The report of a subordinate Magistrate or a police-officer may be 'information' for the purpose of this section, 2 Mad. H. C. 240; though not for the purpose of sec. 118, 6 Bom. H. C., Cr. 1.

[2] residing within the local limits of his jurisdiction, 6 All. 28.

[3] 10 Ben. 441. A Magistrate cannot prevent *A* from exercising his rights of property because *B* would be likely to commit a breach of the peace if *A* did so.

[4] This section does not empower a Magistrate to issue process on persons not residing within the limits of his district. Where a Magistrate believes that certain persons resident beyond such limits are likely to break the peace within his district, he should have information of the fact laid before the Magistrate within whose district they reside, and have evidence in support thereof forthcoming, 11 Cal. 737.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided[1], require such person to show cause why he should not be ordered to execute a bond[2], with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or a Magistrate[3] of the first class specially empowered in this behalf by the Local Government, receives information[4] that any person within the local limits of his jurisdiction is an habitual robber, housebreaker or thief[5], or an habitual receiver of stolen property knowing the same to have been stolen[6], or that he habitually commits extortion[7], or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury[8],

such Magistrate may, in manner hereinafter provided[1], require such person to show cause why he should not be ordered to execute a bond[9], with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix[10].

[1] Secs. 112–117; see 11 Cal. 13.

[2] For the form see Sched. V. No. 11.

[3] Act X of 1886, sec. 5.

[4] Conversations out of Court are not proper material for acting upon, 6 All. 132, per Straight J., and see 2 All. 835.

[5] See Penal Code, secs. 378, 390, 445.

[6] Penal Code, secs. 410, 411.

[7] Penal Code, sec. 383.

[8] Penal Code, sec. 385. The section does not, as it ought, apply to habitual protectors or harbourers of thieves, or to habitual aiders in the concealment or disposal of stolen property.

[9] See form, Sched. V. No. 11: 4 Mad. H. C. Rulings, xlvii. The amount of security should be such as to afford the person concerned a fair chance of complying with the order.

[10] The mere fact that a person from whom security is required has been previously convicted of offences against property does not justify proceedings under this section. There must be evidence that he has done some act indicating an intention to return to his former course of life, 10 Bom. 174: 12 Cal. 520.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874[1].

Order to be made.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received[2], the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class[3] of sureties (if any) required[4].

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him[5].

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons[6] requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person[7], the Magistrate may at any time issue a warrant for his arrest.

Copy of order under s. 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with per-

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon

[1] i.e. where they are persons of European extraction found asking for alms or wandering about without any visible means of subsistence, Act IX of 1874.

[2] 6 All. 214.

[3] e.g. landholders.

[4] These provisions are directory only, not imperative, 8 Cal. 724, per Field J.

[5] 14 Cal. 60, dissenting from 6 Cal. 291.

[6] See form, Sched. V. No. 12.

[7] 6 All. 138.

to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader[1]. Personal attendance

117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence[2] as may appear necessary. Inquiry as to truth of information.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases[3]; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases[4], except that no charge need be framed[5].

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise[6].

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly[7]: Order to give security.

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for

[1] Sec. 4, cl. (*n*), supra, p. 63; and as to when the Magistrate ought to allow appearance by a pleader, see 12 Cal. 133.

[2] 5 Bom. H. C., Cr. 105: 6 ibid. 1: 2 All. 835, per Straight J.: 12 Cal. 520.

[3] Infra, chap. XX, ss. 241–250, and see cases in Mayne, P. C. p. 296.

[4] Infra, chap. XXI, ss. 251–259.

[5] 6 All. 132. Before making an order directing security for good behaviour, the accused must be informed of the accusation which he has to meet and given an opportunity of entering upon his defence, 11 Cal. 13.

[6] The mere record of previous convictions on account of which he has undergone punishment does not satisfy the requirements of secs. 110, 117 and 118; 10 Bom. 174.

[7] As to appeals against this order, see sec. 406 infra, and 9 Cal. 878.

a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive[1]:

thirdly—that when the person in respect of whom the inquiry is made is a minor[2], the bond shall be executed only by his sureties.

Discharge of person informed against.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment[3] of, any offence punishable with imprisonment[4], wherever it may be committed, is a breach of the bond[5].

Power to reject sureties.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that,

[1] 2 Cal. 384: 6 Cal. 14: 4 Mad. H. C. Rulings, xlvii. The amount should be such as to afford the person against whom the order is made a fair chance of complying with it.

[2] Act IX of 1875.

[3] Penal Code, sec. 107.

[4] See vol. i. of this work, pp. 25, 26.

[5] As to the procedure thereon, see sec. 514 infra.

for reasons[1] to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of security.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant[2] directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit[3]: provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous[4] or simple as the Court or Magistrate in each case directs[5].

Power to release persons im-

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for

[1] The ground of refusal must be valid and reasonable, 22 Suth. Cr. 37.

[2] See the forms, Sched. V. Nos. 13, 14.

[3] There is no appeal from an order made by a District Magistrate under this section and, on reference by the Magistrate, confirmed by the Sessions Judge, 9 Cal. 878.

[4] Penal Code, sec. 53.

[5] As to the removal of persons detained in prison under this section see the section substituted by Act X of 1886, sec. 25, for sec. 32 of the Prisoners' Act, 1871.

prisoned or failing to give security.

failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged [1].

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court [2], as the case may be, and such Court may, if it thinks fit, order such person to be discharged [1].

District Magistrate may cancel bond for keeping the peace.

125. The District Magistrate [3] may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction [4].

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

[1] See form of warrant to discharge, Sched. V. No. 115.

[2] Sec. 4, cl. (*i*).

[3] No other Magistrate can do so, sec. 530, cl. (*f*).

[4] He cannot now exercise such power in the case of bonds executed without his local limits.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

127. Any Magistrate or officer in charge of a police-station [1] may command any unlawful assembly [2], or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the police in the towns of Calcutta and Bombay.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the Presidency-towns [3], may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be

[1] or a police officer superior in rank to an officer in charge of a police station, 7 Bom. 42.

[2] Penal Code, sec. 142.

[3] Sec. 4, cl. (*h*).

necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of Commissioned Military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, military officer, police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(*a*) no Magistrate or police-officer acting under this chapter in good faith [1],

(*b*) no officer acting under section 131 in good faith [1],

(*c*) no person doing any act in good faith [1] in compliance with a requisition under section 126 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

[1] i. e. with due care and attention, Penal Code, sec. 52, supra, vol. i. p. 103. note 5.

CHAPTER X.

PUBLIC NUISANCES[1].

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class[2], considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public[3], or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort[4] of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order[5] requiring the person[6] causing such obstruction or nuisance, or carrying on

[1] The powers given by secs. 133–137, with regard to the obstruction of public ways, are not to be exercised where there is a *bonâ fide* dispute as to the existence of the public right. Where there is such a dispute, no order can be made under these sections until the public right has been established by proper legal proceedings, civil or criminal, 11 Calc. 8. As to the judicial inquiry necessary under sec. 133, see 11 Cal. 271.

[2] Not Presidency Magistrates, who deal with nuisances under the Penal Code and local Acts.

[3] Obstructions of private paths and drains can only be dealt with by civil suits, 2 Suth. Cr. 36: 5 Suth. Cr. 58.

[4] as distinguished from religious or sentimental gratification: as to this see 2 Bom. 457.

[5] See form, Sched. V. No. 16. No unconditional order can be made under this section, 9 Cal. 637.

[6] This includes a company, Penal Code, sec. 11: General Clauses Act, sec. 2, cl. (2), supra, vol. i. pp. 94, 487.

such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank[1], well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided[2].

No order duly made by a Magistrate under this section shall be called in question in any Civil Court[3].

Explanation.—A 'public place' includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct[4], and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135. The person against whom such order is made shall—

Person ordered must obey, or show cause or claim jury.

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

[1] As to filling up or deepening tanks which have become a public nuisance, see 10 Suth. Cr. 27, 51.

[2] 9 Cal. 637.

[3] 3 Ben. Appx. 43.

[4] e. g. by beat of drum.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code[1]; and the order shall be made absolute.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case[2].

If the Magistrate is not so satisfied, the order shall be made absolute[3].

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury[4] consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate[5], and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict[6].

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors[7] find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was

[1] But see sec. 195, cl. (*b*) infra, and sec. 487 infra.

[2] and the High Court does not interfere as a Court of revision, 8 Cal. 883.

[3] provided he has taken evidence as a basis for the order, 11 Bom. 375.

[4] See form of order constituting the jury, Sched. V. No. 117.

[5] in the exercise of a sound discretion, 21 Suth. Cr. 43.

[6] This time may be extended under section 141. If one of the jurors declines to act, the Magistrate should appoint another jury and commence inquiry afresh, 11 Cal. 84. And when a minority of the jurors do not act the Magistrate cannot proceed upon a report submitted by the majority. But he may then act under sec. 141; 13 Cal. 275.

[7] after due deliberation amongst themselves, 13 Cal. 275.

made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any buildings, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith[1] under this section.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order[2] as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction[3] to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith[1] by a Magistrate under this section.

[1] See Penal Code, c. 522. A suit would probably lie against a party who, actuated by malicious motives, institutes proceedings under this chapter; see 1 Ben. S. N. xvii.

[2] For the form, see Sched. V. No. 18.

[3] For the form, see Sched. V. No. 19.

Power to prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order[1] any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code[2] or any special or local law.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

Power to issue order absolute at once in urgent cases of nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order[3] stating the material facts of the case[4] and served in manner provided by section 134, direct any person to abstain from a certain act[5] or to take certain order[6] with certain property[7] in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety[8], or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

[1] See form, Sched. V. No. 20.

[2] Sec. 268.

[3] See the form, Sched. V. No. 21.

[4] 1 Ben. Ap. Cr. 20.

[5] e. g. interfering with a temple and its property, 3 Mad. 354. As to cases in which the public peace is likely to be disturbed by religious processions through public streets, see 2 Mad. 140: 6 Mad. 203.

[6] This does not include an irrevocable action, such as cutting down trees, 13 Suth. Cr. 72.

[7] The heading of the chapter tends to show that this is only immoveable property. The Magistrate cannot make an order under sec. 144 relating to the custody of a sum of money even though there is a dispute concerning it which may lead to a breach of the peace, 12 Suth. Cr. 38; and see 23 Suth. Cr. 57, as to collecting market-dues.

[8] The High Court of Bombay held that, under the corresponding section (25) of the Code in force in 1869, a Magistrate might order the hereditary priests of a public temple much resorted to by pilgrims to heighten and widen its door, so as to improve the ventilation and to prevent the dangers arising from over-crowding, 6 Bom. H. C., Cr. Ca. 36.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself[1] or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof[2]; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land etc. is likely to cause breach of peace.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute[3] likely[4] to cause a breach of the peace[5] exists concerning any tangible immoveable property[6], or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied[7], and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession[8] of the subject of dispute.

[1] 13 Suth. Cr. 72, col. 1.

[2] To obtain a perpetual injunction recourse must be had to the Civil Courts.

[3] There must be a substantial dispute (not a mere discussion or verbal altercation, 5 Cal. 197) between parties who have each some semblance of right or supposed right, 6 Cal. 841 (on sec. 530 of the Code of 1872).

[4] Mere probability is not enough, 7 Cal. 385.

[5] There must be a reasonable apprehension that a disturbance of the peace is likely to occur rendering it necessary that the Magistrate should take immediate steps to prevent it (7 Calc. 385), and he must be satisfied that the suggestion of this apprehension is not merely colourable, made to induce him to deal with matters properly cognisable by the civil courts, 10 Cal. 78.

[6] The Calcutta High Court has held that a dispute as to the right to collect rent from ryots is such a dispute, 11 Cal. 413, but not one relating to a right to fish in a *jalkar*, 12 Cal. 539: 13 Cal. 179. The former ruling seems erroneous.

[7] 13 Cal. 175.

[8] i. e. the possession, however ob-

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence[1] produced by them respectively, consider the effect of such evidence, take such further evidence[1] (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then[2] in such possession of the said subject. Inquiry as to possession.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order[3] declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction[4]. Party in possession to retain possession until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed[5].

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it[6] until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof. Power to attach subject of dispute.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace[7] exists concerning the right to do or prevent the doing of anything in Disputes concerning easements, etc.

tained, of the party in possession at the time of the inquiry, 12 Cal. 521. The 'possession' under the Code of 1872 did not include occupancy by a trespasser, 6 Mad. H. C. Rulings, xiii (on c. 22 of old Code). As to possession, see vol. i. of this work, p. 56.

[1] on oath or affirmation, 7 Ben. 322. The Magistrate may summon witnesses in cases under this section, sec. 540 infra.

[2] 11 Cal. 373. As to questions of title, 14 Cal. 169.

[3] See form, Sched. V. No. 22.

[4] Where the property is not cultivated in consequence of the order, and the plaintiff sued for damages for loss caused by the non-cultivation, see 6 Mad. 426.

[5] Proceedings under this section should, on all points of procedure, be regarded as summons-cases, 11 Cal. 762. As to the costs, see infra, sec. 148, par. 3.

[6] See the form of the warrant of attachment, Sched. V. No. 23.

[7] 5 Cal. 194.

or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order[1] permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be[2].

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

[1] See form, Sched. V. No. 24.

[2] That the magistrate cannot make a purely declaratory order under this section, see 5 Cal. 194. The burden of proof lies on the party alleging a right to prevent another from exercising ordinary proprietary rights over his own land, 11 Cal. 52. As to the lawful use of a public way, 7 Mad. 51.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognisable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognisable offence[1].

Information of design to commit such offences.

150. Every police-officer receiving information of a design to commit any cognisable offence[1] shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

Arrest to prevent such offences.

151. A police-officer knowing of a design to commit any cognisable offence[1] may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented[2].

Prevention of injury to public property.

152. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Inspection of weights and measures.

153. Any officer in charge of a police-station[3] may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction[4].

[1] i. e. any offence for which he may arrest without warrant.

[2] As to reporting such arrests, see sec. 62, supra.

[3] Sec. 4, cl. (*q*), supra.

[4] This section does not apply to the police in Calcutta or Bombay: see for their powers as to weights and measures in Calcutta, Ben. Act IV of 1866, sec. 56; in Bombay, Bom. Act IV of 1882.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognisable cases.

154. Every information relating to the commission of a cognisable offence[1], if given orally to an officer in charge of a police-station[2], shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed[3] by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in non-cognisable cases.

155. When information is given to an officer in charge of a police-station[2] of the commission within the limits of such station of a non-cognisable offence[1], he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognisable cases.

No police-officer shall investigate a non-cognisable case[1] without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any police-officer receiving such order may exercise the same powers[4] in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station[2] may exercise in a cognisable case[5].

Investigation into cognisable cases.

156. Any officer in charge of a police-station[2] may, without the order of a Magistrate, investigate any cognisable case[5] which a Court having jurisdiction over the local area within

[1] See sec. 4, cl. (*q*), supra.

[2] Sec. 4, cl. (*o*).

[3] This would no doubt include 'marked' in the case of a person unable to write.

[4] See sec. 156.

[5] i.e. a case in which a police-officer may arrest without warrant.

the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Procedure where cognisable offence suspected.

157. If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognisance of such offence upon a police report[1], and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender :

Provided as follows :—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot :

Where police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

Reports under section 157 how submitted.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

[1] See sec. 191, infra.

Power to hold investigation or preliminary inquiry.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation[1] or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Police-officer's power to require attendance of witnesses.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person[2] being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required[3].

Examination of witnesses by police.

161. Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly[4] all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture[5].

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration[6], made by any person to a police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or shall[7] be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

No inducement to be offered.

163. No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement,

[1] Sec. 4, cl. (*h*).

[2] other than the accused, who may be arrested at any time, if necessary, without a warrant. The intention of the section is only to provide an easy means of obtaining evidence, 7 Mad. 275.

[3] And if he disobeys he is punishable under the Penal Code, sec. 174.

[4] See 7 Cal. 121. If he knowingly answers falsely he is punishable under the Penal Code, sec. 193. See 8 Bom. 216: 10 Cal. 405.

[5] A witness, therefore, who makes a false statement to a police-officer in reply to a question which he is bound to answer is guilty of intentionally giving false evidence (Penal Code, sec. 193): the law on this subject laid down by the High Court (7 Cal. 121) was intentionally altered by the legislature, 10 Cal. 406.

[6] 8 Cal. 211.

[7] Act X of 1886, sec. 6.

threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24[1].

But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will[2].

Power to record statements and confessions.

164. Any Magistrate not being a police-officer[3] may record any statement or confession made to him[4] in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded[5] in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case[6]. Such confessions shall be recorded[5] and signed[7] in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning[8] the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

'I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him[9].

'(*Signed*) A. B.,

'*Magistrate*[10].'

Search by police-officer.

165. Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the

[1] 10 Cal. 776, when the Magistrate had said to the prisoner that he had better tell the truth. See infra.

[2] As to confessions to police-officers see the Evidence Act, infra, secs. 26–28.

[3] 1 Cal. 207 : 4 Mad. H. C. Rulings, iii: 7 Mad. 287.

[4] whether by the accused or by a witness, 2 Bom. 643.

[5] Where the statement or confession is made in a language other than the language of the Court, it is recorded in the language in which the interpreter conveys it to the Court, 5 Cal. 826.

[6] 3 All. 338.

[7] But refusal to sign is not punishable under the Penal Code, sec. 180; 4 Bom. 15.

[8] as to whether or not the confession was made voluntarily: see 10 Bom. H. C. 175.

[9] 1 Bom. 219.

[10] As to confessions in India and the circumstances under which they are made and retracted, see 6 All. 550, per Duthoit J.

production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section[1].

When officer in charge of police-station may require another to issue search-warrant.

166. An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well founded, the officer in charge of

[1] As to searches for contraband salt, see Ben. Act VII of 1864, sec. 28; Mad. Act I of 1882, secs. 21, 23; Bom. Act VII of 1873, sec. 8, and the Salt Act, XII of 1882, secs. 15, 18.

the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond[1], with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognisance of the offence on a police report[2] and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognisance of the offence upon a police

[1] For the form of the bond, see Sched. V. No. 25; as to making a deposit in lieu of executing this bond, see infra, sec. 513.

[2] Sec. 191, infra.

report and to try the accused or commit him for trial[1]; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond[2] to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants etc. not to be required to accompany police, nor subjected to restraint.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond[3]:

Recusant complainant or wit-

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him

[1] Sec. 191, infra.

[2] See the form, Sched. V. No. 26.

[3] See Penal Code, sec. 166.

under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed. ness may be forwarded in custody.

172. Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory[1], or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognisance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties. Report of police-officer.

Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the Local Government by general or special order so directs[2], be submitted through that officer, and he may, pending the orders of the

[1] 9 Cal. 455. But the prisoner cannot require that the police-officer shall for this purpose refer to a memorandum made by him, 8 Cal. 154.

[2] Act X of 1886, sec. 6.

Magistrate, direct the officer in charge of the police-station to make further investigation[1].

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide etc.

174. Every officer in charge of a police-station, on receiving information[2] that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

[1] Act X of 1886, sec. 6.

[2] Sec. 45, *supra*, p. 77.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorised to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate[1].

Power to summon persons.

175. An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend[2] and to answer truly[3] all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognisable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court[1].

Inquiry by Magistrate into cause of death.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case[4].

Power to disinter corpse.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined[1].

[1] This section does not apply to the Police in Madras, sec. 1, cl. (*e*), supra.

[2] See Penal Code, sec. 174.

[3] See Penal Code, secs. 179, 193, and 8 Bom. 216, 10 Cal. 405.

[4] But he need not draw up a report and submit it to the District Magistrate, 3 Cal. 742; and such a report, if made, is not part of a judicial proceeding.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done[1], and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) *A* is wounded within the local limits of the jurisdiction of Court *X*, and dies within the local limits of the jurisdiction of Court *Z*. The offence of the culpable homicide[2] of *A* may be inquired into or tried either by *X* or *Z*.

(*b*) *A* is wounded within the local limits of the jurisdiction of Court *X*, and is during ten days within the local limits of the jurisdiction of Court *Y*, and during ten days more within

[1] or omitted, see sec. 4, cl. (*w*), supra, p. 64. [2] Penal Code, sec. 299.

the local limits of the jurisdiction of Court *Z*, unable in the local limits of the jurisdiction of either Court *Y* or Court *Z* to follow his ordinary pursuits. The offence of causing grievous hurt[1] to *A* may be inquired into or tried by *X*, *Y* or *Z*.

(*c*) *A* is put in fear of injury within the local limits of the jurisdiction of Court *X*, and is thereby induced, within the local limits of the jurisdiction of Court *Y*, to deliver property to the person who put him in fear. The offence of extortion[2] committed on *A* may be inquired into or tried either by *X* or *Y*.

Place of trial where act is offence by reason of relation to other offence.

180. When an act[3] is an offence by reason of its relation to any other act[3] which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment[4] may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed[5].

(*b*) A charge of receiving or retaining stolen goods[6] may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped[7] may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits,

181. The offence of being a thug[8], of being a thug and committing murder, of dacoity[9], of dacoity with murder[10], of having belonged to a gang of dacoits[11], or of having

[1] Penal Code, sec. 320.

[2] Ibid., sec. 383.

[3] or omission, sec. 4, cl. (*w*), supra, p. 64.

[4] Penal Code, secs. 107, 108.

[5] But where a foreign subject resident in foreign territory instigated in that territory the commission of an offence, which was in consequence committed in British India, it was held that he was not amenable to the jurisdiction of a British Court established under this Code, 10 Bom. H. C. 356; and see further as to the want of jurisdiction over foreigners in respect of offences committed out of British India, 4 Bom. H. C., Cr. Ca. 38: 10 Bom. 186: 1 Mad. 171: 5 Mad. 23. As to such offences committed by subjects of Her Majesty, see sec. 188, infra.

[6] Penal Code, sec. 410, as amended by Act VIII of 1882, sec. 4. See 10 Bom. 186.

[7] Penal Code, sec. 368.

[8] Ibid., secs. 310, 311.

[9] Ibid., sec. 391.

[10] Ibid., sec. 396.

[11] Ibid., sec. 400.

escaped from custody, etc.

escaped from custody[1], may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation[2] or of criminal breach of trust[3] may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing,

The offence of stealing anything[4] may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain, or not in one district only; or where offence is continuing, or consists of several acts.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one[5], and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage[6].

Offences against Railway,

184. All offences against the provisions of any law for the time being in force relating to Railways[7], Telegraphs[8], the

[1] Penal Code, sec. 224.
[2] Ibid., secs. 403, 404.
[3] Ibid., secs. 405–409.
[4] Ibid., sec. 378.
[5] The Madras High Court has held that an offence is not a 'continuing one' unless a British Indian Court has jurisdiction at the place of the inception of the offence, Mad. H. C. Pro., 31 Oct. 1876, cited by Henderson, p. 162.
[6] See as to the former law on this subject, 25 Suth. Cr. 45 : 1 Mad. H. C. 193 : 13 Ben. Appx. 4.
[7] Act IV of 1879.
[8] Act I of 1876.

Post-office[1] or Arms and Ammunition[2] may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Telegraph, Post-office and Arms Acts.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

In British Burma, when the offender is an European British subject[3], the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him[4], and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before

[1] Act XIV of 1866.
[2] Act XI of 1878.
[3] Sec. 4, cl. (*u*).
[4] That he may issue process from a place in foreign territory, see 1 Bom. 340.

whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject[1] commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject[2] of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence

[1] Sec. 4, cl. (*u*).

[2] i.e. a subject of Her Majesty born or naturalised in India and not coming within the second clause of the definition of 'European British subject,' sec. 4, cl. (*u*). Merely owning land in British India and occasionally residing in British India does not make one 'a Native Indian subject,' Panjáb Record, 1885, p. 1, cited by Henderson, p. 165. For cases in which a Native was tried under the corresponding sections of Acts XI of 1872 and XXI of 1879, see 6 Bom. 622; 2 All. 218.

if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

'Political Agent' defined.

190. In sections 188 and 189 the expression 'Political Agent' means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent, under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Cognisance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognisance of[1] any offence—

(*a*) upon receiving a complaint[2] of facts which constitute such offence;

(*b*) upon a police-report of such facts;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge[3] or suspicion, that such offence has been committed[4].

[1] This, of course, does not make it optional with the Magistrate to hear a complainant, 13 Cal. 334.

[2] Sec. 4, cl. (*a*), *supra*, p. 61.

[3] A belief founded on private and anonymous information is not 'knowledge,' 4 Ben. Appx. 1.

[4] 5 Ben. 274: 4 Cal. 712.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognisance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognisance under clause (*c*) of offences for which he may try or commit for trial.

When a Magistrate takes cognisance of an offence under clause (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session[1].

Transfer of cases by Magistrates.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognisance, for inquiry[2] or trial to any Magistrate subordinate[3] to him[4].

Any District Magistrate may empower any Magistrate of the first class who has taken cognisance of any case, to transfer it for inquiry[2] or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognisance of offences by Courts of Session.

193. Except as otherwise expressly provided by this Code[5] or by any other law for the time being in force, no Court of Session shall take cognisance of any offence as a Court of original jurisdiction, unless the accused has been committed[6] to it by a Magistrate duly empowered in that behalf[7].

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial[8].

[1] Added by Act III of 1884, sec. 2.

[2] Not preliminary inquiry, 4 Mad. H. C. Appx. xl.

[3] See sec. 17, supra.

[4] As to withdrawing or recalling cases so transferred, see sec. 528, infra.

[5] See secs. 477, 480, 485.

[6] 13 Suth. Cr. 17, col. 1: 4 Bom. H. C., Cr. Ca. 35. As to the presumption that the commitment has been duly made, see the Evidence Act, sec. 141, cl. (*e*).

[7] The object of this restriction is to secure to the prisoner a preliminary inquiry, which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him, and enables him to make his defence, 3 Mad. 351.

[8] Applications under chap. xxxii.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial. by Assistant Sessions Judges.

194. The High Court may take cognisance of any offence upon a commitment made to it in manner hereinafter provided. Cognisance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognisance—

(*a*) of any offence punishable under sections 172 to 188[1] (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned[2], or of some public servant to whom he is subordinate; Prosecution for contempts of lawful authority of public servants.

(*b*) of any offence punishable under section 193[3], 194, 195[4], 196, 199, 200, 205, 206, 207, 208, 209, 210, 211[5] or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate; Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate[6]. Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person[7]; but it shall, so far as practicable, specify the Court or other place in Nature of sanction necessary

cannot therefore be referred to a Joint Sessions Judge, 9 Bom. 354.

[1] As to the offence punishable under the Penal Code, sec. 185, see 7 N. W. P. 132.

[2] These words must be read in connection with sec. 476. Where a *Court* is acting under sec. 195 a complaint in the strict sense of the Code is not required, 7 All. 871. A complaint directly made by the public servant is quite as sufficient as his sanction. See 13 Cal. 270, dissenting from 5 All. 36.

[3] 6 Mad. H. C. 92: 6 Suth. Cr. 11: 11 Suth. Cr. 17. Sanction is not necessary before instituting a charge under sec. 82 of the Registration Act, 11 Cal. 566.

[4] 6 All. 101.

[5] 6 All. 114.

[6] In this clause 'Court' includes a sub-registrar acting under sec. 41 of the Registration Act, 1877, 10 Mad. 154.

[7] Marsh. 270: 7 Mad. 224.

which, and the occasion on which, the offence was committed[1].

When sanction is given in respect of any offence referred to in this section, the Court taking cognisance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate[2]; and no such sanction shall remain in force for more than six months from the date on which it was given[3].

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie[4].

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Prosecution for State-

196. No Court shall take cognisance of any offence punishable under Chapter VI of the Indian Penal Code, except

[1] 11 Bom. H. C. 34. As to the object of the sanction, see 16 Suth. Cr. 37. It ought always to be in writing and attached to the record; but it may be oral, and in one case (5 Bom. H. C., Cr. Ca. 38) it was implied. Before granting the sanction the Court must satisfy itself that an offence has been committed, 7 Mad. 562; but it need not hold an inquiry as to all the persons implicated, 7 Mad. 224. See, too, sec. 476 infra, and 6 All. 98, 101. The Court granting the sanction should specify the section of the Penal Code under which proceedings are to be instituted, 6 All. 106. A sanction applied for after the termination of the proceedings in the course of which the offence is alleged to have been committed ought not to be granted unless the alleged offender had had notice of the application and an opportunity of being heard, 10 Cal. 1100.

Under sec. 537 infra no finding etc. can be reversed or altered on appeal or revision on the ground that the sanction has not been given, unless there has been a failure of justice. Objections to jurisdiction on the ground of want of sanction should apparently be taken at the trial, 7 Mad. H. C. 58, per Holloway J.

[2] Sec. 439, infra; see 22 Suth. Cr. 11: 7 Mad. 314.

[3] This means that a Magistrate shall not take cognisance of a case under a sanction which is more than six months old, not that the whole prosecution shall be completed within that period, 6 All. 45. The Court which granted a sanction which has expired by efflux of time may grant a fresh sanction, 6 All. 45.

[4] A District Judge has therefore power to revoke or grant a sanction granted or refused by a Subordinate Judge, 7 Mad. 314. That an unsuccessful application for sanction may be no ground for a suit for malicious prosecution, see 9 All. 59.

section 127, or punishable under section 294 A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf[1]. offences, or keeping a lottery.

197. When any Judge[2], or any public servant[3] not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence[4], no Court shall take cognisance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government. Prosecution of Judges and public servants.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held[5]. Power of Government as to prosecution.

198. No Court shall take cognisance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence. Breach of contract, defamation and offences against marriage.

199. No Court shall take cognisance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman[6], or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed. Adultery or enticing a married woman.

[1] See as to sec. 294 A, *British Burma Gazette*, 19 June, 1878.

[2] See Penal Code, sec. 19.

[3] See Penal Code, sec. 21. A municipal corporation is not a public servant within the meaning of this section, 3 Cal. 758.

[4] 2 Bom. 481: 7 Bom. H. C., Cr. Ca. 61, and a Court has no jurisdiction to entertain a charge against such judge or public servant if preferred otherwise than in accordance with such determination and specification, 9 Mad. 439, 8 Bom. H. C., Cr. Ca. 32, where a judge was charged with using defamatory language to a witness during the trial of a suit.

[5] The sanction of the Governor General in Council is required to prosecutions for acts purporting to be done under chapter ix. of this Code. See sec. 132.

[6] 24 Suth. Cr. 19: 5 All. 233. He must, even though he be a minor, make the complaint himself, unless he be absent.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES[1].

Examination of complainant.

200. A Magistrate taking cognisance of an offence on complaint shall at once examine the complainant upon oath[2], and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognisance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognisance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Postponement of issue of process.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorise in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognisance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either

[1] Secs. 200–209 should be read together, 14 Cal. 141.

[2] so as to enable the Magistrate to exercise his judgment as to whether there is or not sufficient ground for proceeding.

inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint[1].

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay[2].

Dismissal of complaint.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint[3] if, after examining the complainant[4] and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding[5].

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

204. If, in the opinion of a Magistrate taking cognisance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he[6] shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction[7].

[1] He cannot give such direction after evidence has been taken for the complainant and process issued, 9 Mad. 282.

[2] As to Madras, see sec. 1.

[3] This dismissal does not amount to an acquittal for the purposes of sec. 403; see the explanation to that section.

[4] and recording his examination, 3 Ben. App. Jur. Cr. 53.

[5] This section should have provided for recording the magistrate's reasons for the dismissal and thus enabling the High Court, in exercising its revisional powers, to consider whether his discretion has been properly exercised. See 14 Cal. 140.

[6] 10 Ben. Appx. 26.

[7] As to process to compel the appearance of an European British subject accused of an offence, see sec. 445, proviso.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendence of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do[1], dispense with the personal attendance of the accused, and permit him to appear by his pleader[2].

But the Magistrate inquiring into or trying the case [3] may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court [4].

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence

[1] As, for instance, when the offence charged is bailable. As to taking a bond binding the accused to appear, see 5 Bom. H. C., Cr. Ca. 64.

[2] Where the accused is a *pardah-nashin* woman her personal attendance should be dispensed with until the Magistrate is satisfied that she has a real charge to answer, 6 All. 59; and see 1 Ben. Short Notes, v, as to such women giving evidence in pálkís.

[3] not the Magistrate issuing the summons.

[4] 2 Suth. Cr. 50. Powers conferred under this section convey authority to carry into effect any of the provisions of chap. xviii, 6 All. 477.

as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate [1].

Process for production of further evidence.

If the complainant or officer conducting the prosecution [2], or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him [3], such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial [4], discharge [5] him, unless it appears to the Magistrate that such person should be tried before himself [6] or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial [7], he shall frame a charge [8] under his hand, declaring with what offence the accused is charged.

Charge to be ex-

As soon as the charge has been framed, it shall be read and

[1] As to remands, see 11 Ben. Appx. 18 : 6 Mad. 63, 69 : and sec. 344, infra.

[2] As to the duty of the prosecution to call witnesses, see 8 Cal. 121 : 10 Cal. 1070.

[3] Sec. 342 infra, and see 1 Ben. S. N. xvi.

[4] 5 All. 161, per Mahmúd J.

[5] As to the effect of a discharge, see 6 Bom. 376 (suit for malicious prosecution), and sec. 403 infra.

[6] As to officers invested under sec. 34, trying cases under sec. 209, see 10 Cal. 85.

[7] The question is whether the prosecution has made out a *primâ facie* case against the accused, and such case arises where credible witnesses make statements, which, if believed, would sustain a conviction, 11 Bom. 372. Compare 11 & 12 Vic. c. 42, s. 25, 3 All. 27.

[8] 8 Bom. 200. As to joint charges where there has been a riot and fight between two bodies of men, see 8 Suth. Cr. 47 : 9 Suth. Cr. 33.

plained, and copy furnished, to accused.

explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session [1].

Quashing commitments under ss. 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law [2].

[1] As to the place of trial, see infra, sec. 336. [2] 6 Mad. 372 : 6 All. 98.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed[1]:

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay[2], or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness[3] (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the com-

[1] 6 Cal. 714.

[2] 3 Cal. 573, per Jackson J.

[3] 8 All. 668: 4 Mad. H. C. 81.

mitment[1], and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge etc. to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must

[1] See form of notice, Sched. V. No. 27.

be stated as to give the accused notice of the matter with which he is charged. Where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge[1].

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case[2]. What implied in charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. Language of charge.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction[3] for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed. Previous conviction when to be set out.

Illustrations.

(*a*) *A* is charged with the murder of *B*. This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

[1] The Madras High Court ruled in 1881, that when the accused is liable to be punished under the Whipping Act, the charge must state the liability, 5 Mad. 158.

For forms of charges, see Sched. V. No. 28.

[2] See the Evidence Act, sec. 105.

[3] See sec. 310, infra.

(*d*) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged[1].

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c*) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d*) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e*) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f*) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

[1] Accuracy and certainty in stating the offence are more especially required where the accused is sought to be implicated for acts not committed by himself, but by others with whom he was in company, 11 Cal. 108, 11 Cal. 106: and see 6 All. 204, per Straight J.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission [1].

Illustrations.

(*a*) *A* is charged, under section 242 of the Indian Penal Code, with 'having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit,' the word 'fraudulently' being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) *A* is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e*) *A* was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge [2], or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter [3] the charge,

[1] See secs. 232 and 237, infra.

[2] These words apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for, 8 Bom. 200.

[3] with due caution, see 6 Bom. H. C., Cr. 76.

as the case may be, having regard to the rules contained in this Code as to the form of charges.

Court may alter charge.

227. Any Court may alter[1] any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict[2] of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn[3] the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined[4].

Effect of material error.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under

[1] This authorises the Court to make to some specific charge an addition in the nature of an alteration; but not to add a new charge, 8 Bom. 210, 211; and see 3 Mad. 351.

[2] i.e. the final verdict which the Judge would be bound to record, 8 Bom. 211.

[3] 3 Mad. 351.

[4] In secs. 226–231 the word 'charge' has the meaning which it has in the rest of the body of the Code, viz. statement of a specific offence, 8 Bom. 209.

Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustrations.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately[1], except in the cases mentioned in sections 234, 235, 236 and 239[2].

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt[3].

Three offences of same kind within a year may be charged together.

234. When a person is accused of more offences than one of the same kind[4], committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable

[1] The mind of the Court might be prejudiced against the prisoner if he were tried in one trial upon different charges resting on different evidence, 7 All. 177.

[2] A charge containing alternative charges of perjury is not a charge of two offences, but of one, 13 Ben. 324: 10 Cal. 937. See the form, Sched. V. No. 28, ii (4), and 7 All. 44. But see 10 Bom. 124.

[3] 10 Bom. 124.

[4] Not necessarily against one and the same person, 9 Cal. 373 (on the corresponding section of Act X of 1872), dissenting from 4 All. 147. See 7 All. 174, where dishonest misappropriations by a postmaster of moneys paid to him by different persons for money-orders were held to be 'of the same kind.'

with the same amount of punishment under the same section of the Indian Penal Code[1], or of any special or local law.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence[2].

II.—Offence falling within two definitions.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

III.—Acts constituting one offence, but constituting when combined a different offence.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts[3].

Nothing contained in this section shall affect the Indian Penal Code, section 71[4].

Illustrations.

to paragraph I—

(*a*) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 491 of the Indian Penal Code.

(*d*) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

[1] See 8 Cal. 450, 634.

[2] 7 All. 29 (dissenting from 6 All. 121); 11 Cal. 349: 12 Cal. 495.

[3] 12 Cal. 495.

[4] which provides that in cases falling under the Cr. Pr. Code, sec. 235, sub-sec, iii, 'the offender shall not be punished with a more severe punishment then the Court which tries him could award for any one of such offences.'

(*e*) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses *B* of having committed an offence, knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) *A*, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code[1].

(*h*) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

[1] The convictions here referred to 'relate especially to convictions obtained under sec. 149 of the Penal Code,' 7 All. 761.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences [1].

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it [2].

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it [3].

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it [4].

Nothing in this section shall be deemed to authorise a

[1] This section, like the corresponding section (455) of the Code of 1872, refers, not to cases in which the facts are doubtful, but to cases in which the application of the law to the facts are doubtful, 7 N.W. P. 137.

[2] 8 Bom. 200.

[3] For decisions on the corresponding section (457) of the Code of 1872, see 3 Cal. 189 and 5 Cal. 871.

[4] 1 Bom. 50.

conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) *A* is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) *A* is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code[1].

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(*a*) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(*b*) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(*c*) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge, charging both with the one theft, and *B* alone with the two other thefts[2].

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution[3], may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord

[1] 23 Suth. Cr. 61.

[2] But where *A* and *B* are accused of giving false evidence in the same proceeding they should be tried separately, 11 Suth. Cr. 16: 10 Cal. 405: 5 All. 17. So where *A* and *B* are members of opposing factions in a riot, 6 Cal. 96.

[3] See sec. 495, infra.

may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn[1].

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases[2].

Substance of accusation to be stated.

242. When the accused appears[3] or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him[4]; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution[5], and also to hear the accused and take all such evidence[6] as he produces in his defence[7].

[1] Compare sec. 424.

[2] i. e. cases relating to offences not punishable with death, transportation, or imprisonment for more than six months, sec. 4, cl. (*t*). Where there are two distinct charges against the same person arising out of the same facts, and one is a summons-case and the other a warrant-case, the mode of trial should be that applicable to the greater of the two charges, i. e. the case should be tried as a warrant-case, 11 Cal. 92, per Wilson J.

[3] As to excusing his personal attendance, see sec. 205.

[4] Where he tenders a written defence the Magistrate need not examine him personally, 16 Suth. Cr. 63.

[5] As to the duty of the prosecution to call witnesses able to give material evidence, and the inference which may be drawn if they are not called, see 8 Cal. 121: 10 Cal. 1070.

[6] A conviction by a Magistrate who has refused to examine a witness formally tendered by the accused is illegal, 4 Ben. Appx. 77.

[7] As to the memorandum of the substance of the evidence, see sec. 355.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court[1].

Acquittal.

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal[2].

Sentence.

If he finds the accused guilty, he shall pass sentence upon him according to law[3].

Finding not limited by complaint or summons.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Non-appearance of complainant.

247. If the summons has been issued on complaint[4], and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear[5], the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused[6], unless for some reason he thinks proper to adjourn the hearing of the case to some other day[7].

[1] Where the complainant fails to make such deposit, the Magistrate deals with the case on the evidence before him, 5 Mad. 160.

[2] As to making an order for compensation against the complainant, see sec. 250, infra, 5 Mad. 381; 10 Bom. 199.

[3] He must pass *some* sentence, if only a nominal one, 4 Mad. H. C., Rulings, lxvi.

[4] See supra, sec. 4, cl. (*a*).

[5] As to dismissal where he does appear and is examined, see sec. 203, supra.

[6] 7 Mad. 213. The Magistrate need not wait till the Court is about to close for the day to give the absent complainant an opportunity of appearing, 7 Mad. 356.

[7] or to a later hour on the same day, 7 Mad. 356. The order for adjournment should ordinarily be made in the presence and hearing of the parties, and if the complainant does not appear on the day or at the hour to which the case is adjourned, the Magistrate may acquit the accused, 22 Suth. Cr. 40.

Withdrawal of complaint.

248. If a complainant[1], at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint[2], the Magistrate may permit him to withdraw the same[3], and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous or vexatious complaints.

250. If, in any case instituted upon complaint[4], a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious[5], he may, in his discretion, by his order of acquittal, direct the complainant[1] to pay to the accused, or to each of the accused

[1] In cases of contempt of the lawful authority of a public servant the 'complainant' must be deemed the public servant whose authority has been resisted, and without whose sanction the offender cannot be prosecuted, and not the person injured by the resistance. 2 Bom. 653. Of course where a judge acting judicially is 'complainant' he is not subject to the penalty provided by sec. 250; 1 Bom. 176.

[2] It will be remembered that this chapter refers only to summons-cases, 6 Mad. 316. As to compounding offences, see sec. 345 and 10 Cal. 551.

[3] And the District Magistrate cannot revive a charge which a Deputy Magistrate has allowed to be withdrawn, 25 Suth. Cr. 64: 10 Cal. 551.

[4] A case instituted by the police on a complaint to them is not 'instituted upon complaint' within the meaning of this section, 6 All. 96: 7 Mad. 563. And as the chapter refers only to summons-cases, compensation under this section cannot be given in warrant-cases: see 1 Bom. H. C. 181: 6 Mad. 316: 7 Suth. Cr. 11, 12. Of course the power conferred by sec. 250 is not confined to complaints of offences under the Penal Code, 4 N. W. P. 94. As 'complaint' means an allegation that some person has committed an 'offence' (sec. 4, cl. *a*, supra) no compensation can be given under this section for an act, such as illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, which has not been made an 'offence' by that Act or otherwise, 9 Mad. 102.

[5] Where the complaint is well-founded as regards the accused *A* and frivolous as regards the accused *B*, compensation may be directed to be paid to *B*, 5 Mad. 381. Where the complaint is both frivolous and false, the award of compensation for its frivolity does not preclude the Magistrate from sanctioning a prosecution for making a false complaint, Mad. H. C. Pro., 12 Nov. 1875, cited by Henderson, p. 238.

where there are more than one, such compensation, not exceeding fifty rupees [1], as the Magistrate thinks fit [2].

Recovery of compensation.

The sum so awarded shall be recoverable as if it were a fine [3]: provided that, if it cannot be realised, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs [4].

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases [5].

Evidence for prosecution.

252. When the accused appears [6] or is brought before a Magistrate, such Magistrate shall proceed [7] to hear the complainant (if any) and take all such evidence [8] as may be produced in support of the prosecution [9].

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon [10] to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against

[1] Where there are (e. g.) three accused persons against each of whom the complaint is frivolous, the Magistrate may award in the whole Rs. 150, i. e. Rs. 50 to each, 14 Suth. Cr. 75.

[2] There is no appeal from an order under this section.

[3] Secs. 386, 387, infra.

[4] See form, Sched. V. No. 30.

[5] i. e. cases relating to offences punishable with death, transportation, or imprisonment for more than six months. Where the complainant makes against the same person two charges, one a summons-case, the other a warrant-case, the procedure must be under chap. xxi; 11 Cal. 91.

[6] Sec. 340.

[7] But see sec. 253, par. 2.

[8] Secs. 353–357.

[9] 3 Cal. 389: 2 All. 447.

[10] See form, Sched. V. No. 31.

the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him[1].

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless[2].

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence[3] triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty[4], the Magistrate shall record the plea[5], and may in his discretion convict him thereon.

Defence.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence[6], be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts[7].

If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for compelling production of evidence at instance of accused.

257. If the accused applies[8] to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the

[1] The discharge is not final like an acquittal, 5 Suth. Cr. 58. Where a subordinate Magistrate has improperly discharged a prisoner and no further evidence is procurable, the District Magistrate should refer the proceedings to the High Court, 1 Cal. 282: 10 Cal. 1027: 6 Mad. 25. As to reviving the proceedings where further evidence has been disclosed, see 2 Cal. 405.

[2] 10 Cal. 67.

[3] not necessarily the offence expressly charged, 5 Bom. H. C., Cr. Ca. 100.

[4] An admission which does not admit all the elements of the charge is not a plea of guilty to the charge, see 7 Cal. 96: 25 Suth. Cr. 23, col. 2.

[5] The plea, not merely a narrative of what occurred and of the statements made by the prisoner, 7 Cal. 96.

[6] even after the case for the prosecution is closed.

[7] See also sec. 257.

[8] at any time.

production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law [1].

Absence of complainant.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded [2], the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused [3].

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government [4], and

(3) any Bench of Magistrates invested with the powers

[1] He must pass *some* sentence, however slight, 3 Suth. Cr. Let. 15, col. 1. For a form of warrant of commitment on a sentence of imprisonment or fine, see Sched. V. No. 29.

[2] Sec. 345, infra.

[3] Except under this section and the last clause of sec. 253, the magistrate cannot, in a warrant case, discharge the accused in consequence of the complainant's absence, 10 Cal. 67. The magistrate need not, in order to give the absent complainant an opportunity of appearing, wait till the Court is about to close for the day, 7 Mad. 213, 356. See sec. 253, par. 2.

[4] All Assistant Commissioners in Oudh, being Magistrates of the first class, have been so empowered, Macph. Lists, 1884, p. 491. Where a Magistrate not empowered in this behalf tries an offender summarily, see sec. 530, cl. (*q*). That for the purpose of giving himself summary jurisdiction, he cannot split up an offence into its component parts, or reject one part of a complaint and accept another, see 4 Cal. 18 and 11 Cal. 236.

of a Magistrate of the first class and specially empowered in this behalf by the Local Government [1] may try in a summary way all or any of the following offences :—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code [2];

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences [3]:—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

[1] That a Bench empowered under section 260 can try only the offences named therein, see 21 Suth. Cr. 12, col. 2: 9 Cal. 96.

[2] 10 Cal. 408.

[3] That a Bench empowered under section 261 can try only the offences named therein, see 21 Suth. Cr. 12, col. 2: 9 Cal. 96.

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant-cases applicable.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter[1].

Record in cases where there is no appeal.

263. In cases where no appeal lies[2], the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he[3] or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor[4];

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

[1] This clause (which was added by the Select Committee) refers only to substantive sentences, not to cases where simple imprisonment is ordered as a process for enforcing payment of fine, 6 All. 61. Solitary confinement may be imposed as part of the sentence in summary trials, 6 All. 83.

[2] See secs. 414, 515.

[3] The magistrate must not depute this duty to a clerk, nor can he affix his signature to the record or judgment by a stamp, 6 Mad. 396.

[4] He should so state the reasons that the High Court on revision may judge whether there were sufficient materials before him to support the conviction, 6 Cal. 579.

Record in appealable cases.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies[1], such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence[2] and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk.

The Local Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

'High Court' defined.

266. In this chapter, except in sections 276 and[3] 307, the expression 'High Court' means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or

[1] See secs. 407, 415.

[2] not the substance of every separate deposition, 25 Suth. Cr. 6, col. 2. If the direction in sec. 264 is not complied with, the Court of Session should not quash the conviction merely for this reason; but if it cannot be disposed of because of this defect, the Court should require the Magistrate to repair the defect, or order a retrial, 1 All. 680.

[3] Act X of 1886, sec. 8.

under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

Trials before Court of Session.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors[1].

Local Government may order trials before Court of Session to be by jury.

269. The Local Government may, by order in the official Gazette[2], direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury[3].

Conduct of trial before Court of Session.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor[4].

B.—Commencement of Proceedings.

Commencement of trial.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him[5], and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused[6] pleads guilty[7], the plea shall be recorded[8], and he may be convicted thereon[9].

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

[1] But see sec. 536.

[2] See the notifications mentioned in the Appendix to the Code.

[3] Act X of 1886, sec. 9.

[4] Sec. 4, cl. (*m*), *supra*.

[5] 5 Cal. 826: 9 Mad. 61.

[6] not his counsel or pleader, 15 Suth. Cr. 42.

[7] An admission which does not comprise all the elements of the charge is not such a plea, 7 Cal. 96: 11 Cal. 410.

[8] 7 Cal. 96. The record should be in the language in which the plea is conveyed to the Court by the interpreter, 5 Cal. 826.

[9] Where there has been a previous conviction, see sec. 310, *infra*.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be [1].

C.—Choosing a Jury.

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct [2].

Jury for trial of persons not Europeans or Americans.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors chosen by lot.

276. The jurors shall be chosen by lot [3] from the persons summoned to act as such, in such manner as the High Court [4] may from time to time by rule direct:

Proviso.

Provided that—

Existing practice.

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Persons summoned not attending.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present [5]; and

Trials before special jurors.

thirdly, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

[1] But it is not an acquittal for the purpose of sec. 403; see the explanation to that section.

[2] See the notifications mentioned in the Appendix to this Code.

[3] 1 Bom. 462.

[4] See sec. 266, supra.

[5] Cf. the English practice of awarding a *tales de circumstantibus*.

Names of jurors to be called.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) some presumed or actual partiality in the juror[1];

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

[1] The following list of grounds of challenge, taken from the New York Code of Criminal Procedure, § 377, with some slight omissions and verbal changes, illustrates the presumed partiality here mentioned:—

1. Consanguinity or affinity, within the ninth degree, to the person alleged to be injured by the crime charged, or on whose complaint the prosecution was instituted, or to the accused.

2. Bearing to him the relation of guardian or ward, attorney or client, ... master or servant, landlord or tenant, ... or being in his employment on wages.

3. Being a party adverse to the accused in a civil suit, or having complained against, or been accused by him, in a criminal prosecution.

4 Having served on a coroner's jury which inquired into the death of the person whose death is the subject of the charge.

5. Having served on a jury which has tried another person for the crime with which the accused is charged.

6. Having been one of a jury formerly sworn to try the same charge and whose verdict was set aside, or which was discharged without a verdict.

7. If the crime charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the accused guilty.

'Actual partiality' is such a state of mind on the part of the juror, in reference to the case or to either party, as satisfies the Court, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging. But the previous expression or formation of an opinion or impression with reference to the guilt or innocence of the accused, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual partiality, to any person otherwise legally qualified, if he declare on oath that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the Court is satisfied that he does not entertain such a present opinion or impression as would influence his verdict. See N. Y. Cr. Proc. Code, § 376.

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873[1].

Procedure when juror ceases to attend, etc.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his

[1] Act X of 1873. The Bombay High Court had ruled that in trials before Sessions Courts the jurors need not be sworn, 3 Bom. H. C., Cr. Ca. 56, and see 8 Ben. 562, per Jackson J.

attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted[1], a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar. Discharge of jury in case of prisoner's sickness.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such. Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors. Procedure when assessor is unable to attend.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to close of Cases for Prosecution and Defence.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused. Opening case for prosecution.

The prosecutor shall then examine his witnesses [2].

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence [3]. Examination of witnesses. Examination of accused before Magistrate.

[1] This provision as to language was inserted by the Select Committee.

[2] It is not enough to put in the depositions and allow the witnesses to be cross-examined upon them, 9 Mad. 83. When the public prosecutor does not call a witness because he would not in his (the prosecutor's) opinion speak the truth or support his case, the prosecutor should explain his reason to the Court and offer to put the witness in the box for cross-examination, 7 All. 904. Where there has been a previous conviction, see sec. 310.

[3] before the accused is called up to enter on his defence. It must of course be first proved that the accused was the person who was examined and gave the deposition, 11 Cal. 580.

Evidence at preliminary inquiry.

288. The evidence of a witness duly taken [1] in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge [2], if such witness is produced and examined, be treated as evidence in the case [3].

Procedure after examination of witnesses for prosecution.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor [4] sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if

[1] As to the presumption that the evidence was duly taken, see the Evidence Act, sec. 80.

[2] The exercise of this discretion by a Sessions Judge is of course open to revision by the High Court on appeal, 11 Bom. H. C. 282, per West J.

[3] 9 Mad. 85. This section does not enable a Court trying a cause to take a witness's deposition bodily from the Magistrate's record, and to treat it as evidence before itself, 7 All. 863, approving of Phear J.'s remarks in 12 Ben. App. 15. The Judge should put to the witnesses whom he proposes to contradict by their former statements the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth, 7 All. 863–4, per Straight J.

[4] 11 Bom. H. C. 102.

any) and after their cross-examination and re-examination (if any) may sum up his case.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial[1].

Prosecutor's right of reply.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply[2].

View by jury or assessors.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial[3].

Locking-up jury.

296. The High Court may, from time to time, make rules[4] as to keeping the jury together during a trial before such

[1] The Judge however may, if he thinks fit, permit the summoning of witnesses not so named, 8 All. 668.

[2] In applying secs. 289 and 292 the construction most favourable to the prisoner should be adopted, 10 Cal. 1024; and see 14 Cal. 245. Where the accused stated when asked under sec. 289 that he meant to adduce evidence and on further consideration did not do so, the Court should not from this circumstance make a presumption adverse to him, 10 Cal. 140.

[3] See secs. 318 and 332, infra.

[4] See the *Bombay Government Gazette*, 24th June 1875, Part I. p. 653.

Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence[1], and laying down the law by which the jury are to be guided[2].

[1] The Judge should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, 3 Suth. Cr. 69; and what weight the jury ought to attach to the several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict, 5 Bom. H. C., Cr. Ca. 85, 94; and see 9 Suth. Cr. 51. He should tell the jury what are the principal points in the evidence, and how they bear for or against the prisoner, 6 Suth. Cr. 72: 25 Suth. Cr. 54. He may warn them not to disbelieve a mass of otherwise consistent evidence because in minor and immaterial points the witnesses made different statements, 1 Suth. Cr. 17. Of course, where there is no legal evidence for the prosecution, the judge should direct the jury to acquit, 7 Suth. Cr. 39. If it be necessary to refer to a previous conviction of the accused, he should tell them to try the present case on its own merits, and warn them not to allow the previous conviction to influence their minds, 6 Suth. Cr. 64, per Norman J. He should not give a positive opinion as to the guilt or innocence of the prisoner, as Native juries are too apt to follow it, without paying any attention to the facts of the case, 1 Suth. Cr. 26, per Glover J.; but see Suth. 1864, Cr. 5, per Jackson J. Nor should he tell the jury that the prisoner had previously been of bad character, 10 Suth. Cr. 39. Nor should he suggest that the prisoner be recommended to mercy, 14 Suth. Cr. 46. Nor should he say that a witness is deserving of credit when there is no evidence on the subject, 10 Suth. Cr. 58.

[2] so far as to make them understand the law as bearing on the facts, 8 Cal. 751, per Field J. For instance, where the prisoner is charged under sec. 304 of the Penal Code, the Judge should point out the distinction between the two classes of culpable homicide mentioned in that section, and direct them to find specially under which, if either, the prisoner was guilty, 6 Ben. Appx. 86. So on the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing thefts (Penal Code, sec. 401), the Judge should point out clearly, 1. the necessity of proof of association, and, 2. the need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts, 6 Mad. H. C. 121. So where the evidence of an accomplice is uncorroborated, the Judge should tell the jury that it is unsafe and contrary both to prudence and practice to convict on such evidence, 6 Bom. H. C., Cr. Ca. 57: see, too, 1 Mad. 394: 1 Bom. 475: 21 Suth. Cr. 69; and, where the accomplice

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence[1] or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial[2];

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given[3];

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors[4].

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding[5].

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

speaks as to two or more persons having been concerned in the same offence, that his testimony should be confirmed as to all the prisoners, not only as to the circumstances of the case, but also as to the identity of the prisoners, 3 Bom. H. C., Cr. Ca. 57.

But the Judge should not argue and dispose of legal objections raised by the prisoner's counsel, 8 Suth. Cr. 88, col. 1. He should 'lay down' the law, but not discuss it. See 8 Cal. 739.

As to setting aside a verdict where the Judge has misdirected the jury, see secs. 423, cl. (*d*), 537. The question for the Appellate Court to consider is whether the tendency of the charge has been upon the whole to give a correct or an incorrect direction to the mind of the jury. It would be wrong to criticise the direction of a Judge in a Mufassal Court as if it were the charge of a Judge in an English Court of Assize, 12 Suth. Cr. 80, per Jackson J.

[1] As e. g. whether a communication is privileged or not, 10 Suth. Cr. 14.

[2] There is no exception in case of a libel or a threatening letter; see in England, Taylor, §§ 46, 47.

[3] as, for instance, when the question is whether a confession should be excluded on account of some previous threat or promise, Taylor, § 23.

[4] See more as to the duties of a Judge, 20 Suth. Cr. 41, per Markby J.

[5] But where the jury say they are uncertain as to the section of the Penal Code applicable to the case of one of the prisoners, the Judge ought not to hand them a copy of the Code leaving them to decide under what section the offence fell, 14 Cal. 164.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not [1];

(*c*) to decide all questions which according to law are to be deemed questions of fact [2];

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) *A* is tried for the murder of *B*.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts *A* ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it [3].

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

[1] Taylor, § 45.

[2] e. g. whether a provocation was grave and sudden enough to prevent the offence from amounting to murder (Penal Code, sec. 300), 11 Cal. 412. The jury decide whether the accused has been previously convicted, 21 Suth. Cr. 40.

[3] When the existence of a specific intention is essential to the commission of a crime, it is probable (though the law nowhere says so) that the jury, in deciding whether an offender had that intention, should take into account the fact that he was drunk when he did the act which, if coupled with that intention, would constitute such crime. See Stephen's Digest, art. 29.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict on each charge.

Questioning jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict[1] on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is[2].

Questions & answers recorded.

Such questions and the answers to them shall be recorded.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

[1] in any form they think fit, 8 Ben. 557, 563.

[2] 21 Suth. Cr. 1, and see 9 Cal. 53. But he should not make minute inquiries to learn the nature of the majority and its opinion, so that he may have the opportunity of accepting or refusing that opinion as a verdict, according as it coincides with his own opinion or not, 10 Cal. 144.

Verdict in Court of Session when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or with a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court[1], he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal[2]; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session[3].

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he

[1] 2 Bom. 526, 527.

[2] 11 Ben. 19. It may, for example, send for additional evidence and deal with the case generally; see chap. xxxi.

[3] This casts the functions both of the Judge and the jury on the High Court, and thus differentiates its position very widely from that of the superior Courts in England, 1 Bom. 12, 13, per West J., on the corresponding clause of Act X of 1872. Nevertheless, the High Court should not set aside the verdict of a jury unless it be perverse and patently wrong, or may have been induced by an error of the Judge, ibid. See 9 Cal. 53: 11 Cal. 85: 10 Bom. 497.

That a trial is not 'concluded' until judgment and sentence are passed, see 9 All. 424, and L.R., 9 Q.B. 350.

should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

Delivery of opinions of assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence[1], and shall then require each[2] of the assessors to state his opinion orally, and shall record such opinion[3].

Judgment.

The Judge shall then[4] give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid

[1] 7 Ben. 63. The object of this provision is to enable the Sessions Judge in long or intricate cases to place the evidence in an intelligible form so as to assist the assessors in arriving at a reasonable conclusion, 9 Cal. 876. Although there was and is no provision requiring the Judge to charge the assessors or lay down the law, the High Court of Madras (4 Mad. H. C., Rulings, vii) thought that, in cases turning on the evidence of an accomplice, the Judge should inform the assessors, first, that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; secondly, that, as a general rule, it is considered unsafe to convict upon such evidence; and, thirdly, to point at any circumstances in the particular case which, in the opinion of the Judge, afford a sufficient reason for relying upon the evidence in that case. So in capital cases, the Judge should explain the difference between culpable homicide and murder, 3 Suth. Cr. 18. So where the prisoner pleads not guilty, and the Public Prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty, 4 Mad. H. C., Rulings, xxxix. And he should call their attention to gross discrepancies and impossible misstatements made by witnesses, if the assessors failed to notice them, 5 Suth. Cr. 70, 71, col. 1.

[2] The Court should not receive the opinion of all the assessors combined, as delivered through one of them.

[3] He must record the grounds of each assessor's opinions, 3 Suth. Cr. 6, whether the prisoner is acquitted or convicted. *Secus* 7 Bom. H. C., Cr. Ca. 82 (1870).

[4] Not necessarily at once; see sec. 366, infra.

down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again[1].

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Jurors' book.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Number of special jurors.

312. The names of not more than four[2] hundred persons shall at any one time be entered in the special jurors' list.

Lists of common and special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes[3], prepare—

[1] Cf. 6 & 7 Will. IV, c. 111 (Archbold, p. 1030), by which this section was suggested.

[2] Act V of 1887, sec. 2.

[3] See *Fort St. George Gazette*, Supplement, 25th April, 1876.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except or next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely: —

(*a*) officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the preventive service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors[1].

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf[2], shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-

[1] See notifications in Macpherson's *Lists*, 1884, pp. 126, 127, 551.

[2] Ibid. p. 552.

houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

325. The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

District Magistrate to summon jurors and assessors.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magis-

trate[1] requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Power to summon another set of jurors or assessors.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Form and service of summons.

328. Every summons[2] to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Excusing attendance of juror or assessor.

330. The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

List of jurors and assessors attending.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such sessions.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised

[1] See form of precept, Sched. V. No. 32.

[2] See form, Sched. V. No. 33.

list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order [1] of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

Power of Advocate-General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

[1] There is no appeal from this order, sec. 404, infra. But see 8 Suth. Cr. 83.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court. Notice of sittings.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, Place of trial of European British subjects.

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate [1], may, with the view of obtaining the evidence of any person [2] supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor in the commission thereof [3]. Tender of pardon to accomplice.

[1] See sec. 529 (*g*), infra.

[2] A pardon may be tendered under this section to a prisoner who has pleaded guilty; but not it seems to one who has pleaded guilty and been convicted on his plea, 7 All. 160.

[3] As to the Magistrate's duty to explain the condition, see 4 Ben. Appx. 51: 12 Suth. Cr. 80, S. C. Where the approver retracted his statement, see 5 N. W. P. 217; 10 Bom. 190.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence[1], tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter[2].

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in

[1] These words merely exclude the case of a man who has actually been convicted of the offence, not the case of a man who, though admitted to be a party to the offence, is unconvicted, 7 All. 163. But the offence must be 'triable exclusively by the Court of Session or High Court': see sec. 337 and 10 Cal. 936.

[2] The pardon may be withdrawn at any time, 8 Cal. 560.

respect of such statement shall be entertained without the sanction of the High Court [1].

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader [2].

Procedure where accused does not understand proceedings.

341. If the accused, though not insane [3], cannot be made to understand the proceedings [4], the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances [5] of the case, and the High Court shall pass thereon such order as it thinks fit.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him [6], the Court may, at any stage of any inquiry or trial [7], without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into

[1] As to the admissibility of a deposition by a person to whom a pardon has been tendered which is subsequently revoked, see 11 Cal. 580.

[2] Sec. 4, cl. (*n*), supra. This section does not apply when the Court is exercising its powers of revision; see sec. 440, infra.

[3] When he is insane see chap. xxxiv, infra.

[4] As, for instance, when he is deaf and dumb; see 22 Suth. Cr. 35, 72.

[5] Before reporting the circumstances the Court must finish the inquiry or trial.

[6] and only for this purpose, 1 Mad. H. C. 199: 6 Cal. 279. The Court must not cross-examine the accused, 6 Cal. 102: 10 Cal. 143. See supra, p. 20. But see 5 All. 253. The Court should not put questions to the prisoner during his trial with a view to supplement the evidence for the prosecution, 3 Bom. H. C., Cr. Ca. 51. As to examining one of two accused persons in the absence of his fellow-prisoner, see 6 Bom. 124: 7 Cal. 65.

[7] after evidence is recorded against him, 9 Mad. 224.

consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge[1].

Power to postpone or adjourn proceedings.

344. If, from the absence of a witness[2] or any other reasonable cause[3], it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor[4], from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody[5]:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—

[1] And see the Evidence Act, secs. 24–29.

[2] 16 Suth. Cr. 21.

[3] That the Court is not at liberty arbitrarily to postpone or adjourn, see 9 Ben. 354, 362, per Couch C.J.

[4] 6 Mad. 63.

[5] 6 Mad. 69. As to releasing him on bail, see infra, sec. 496.

Offence.	*Sections of Indian Penal Code applicable.*	*Person by whom offence may be compounded.*
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman [1].
Enticing or taking away or detaining with a criminal intent a married woman	498	
Defamation...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ...	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt [2], causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life,

[1] 5 Bom. H. C., Cr. Ca. 27.

[2] For the previous law as to compounding this offence, see 1 Bom. 147.

punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court [3] before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded [1].

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction [2], as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself [3], or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when after commencement of inquiry or trial

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High

[1] This will prevent the suppression of prosecutions for the offences specified in this paragraph when the public is deeply interested in the punishment of the offender.

[2] 4 Mad. 327.

[3] He should hear all the evidence in the case before deciding it, just as if no proceedings had been taken by the submitting Magistrate, 14 Suth. Cr. 3.

Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained. Magistrate finds case should be committed.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate. Trial of persons previously convicted of offences against coinage, stamp-law or property.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate. Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order[1] in the case as he thinks fit, and as is according to law: provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

[1] This does not deprive him of his power to commit the case to the sessions for trial, 4 Bom. 240: 10 Bom. 196: 1 Mad. 289: 13 Cal. 305: 9 Mad. 377; and see 14 Cal. 355. It has been held in Madras that the Magistrate to whom a case is sent under this section cannot send it on for inquiry to another Magistrate, 4 Mad. 233. But see 7 Bom. H. C., Cr. Ca. 69.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part[1] of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding[2] may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

351. Any person attending a Criminal Court[3], although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognisance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Courts to be open.

352. The place in which any Criminal Court is held for

[1] 24 Suth. Cr. 53.

[2] There is no such provision in the case of the Sessions Judge, 3 Mad. 112. The object of sec. 350 is to provide for the necessarily frequent change in the office of Magistrate.

[3] This includes a Sessions Court; see the saving in sec. 193, supra.

the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Recording evidence in Provinces.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate [1]) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate [1], and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds [2].

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability

[1] See sec. 362, infra.

[2] It is not enough to state that a witness 'deposes as last witness,' 1 Bom. H. C. 91.

to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue[1].

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands[2].

[1] See notifications in Macpherson's *Lists*, 1884, pp. 215, 481, 492, 552, 595.

[2] This section does not apply to the examination of prisoners, 12 Suth. Cr. 44. As to them, see sec. 364.

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence [1] is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader [2] and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted [3] to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court [4]. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

[1] i.e. oral evidence, 15 Suth. Cr. 25. As to documentary evidence, though the prisoner has a right to have all or any part of any document used on his trial interpreted to him, yet where it is put in merely to give formal proof of an uncontestable fact it is enough to make him understand what the document is and why it is put in, Ibid.

[2] Sec. 205, supra.

[3] Sec. 543, infra.

[4] The drafting here is faulty. The meaning probably is that no such sentence shall be passed unless the Magistrate has either himself taken down the evidence or caused it to be taken down from his dictation.

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full [1], in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed [2] by the accused [3] and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263 [4].

[1] not necessarily by the Magistrate's own hand, 20 Suth. Cr. 50: 1 Bom. 219.

[2] Where the accused is unable to write his name, this would probably be construed to include 'marked.'

Where the accused at the time of trial confesses his guilt to the Court this provision is inapplicable, for the Court may sentence him at once under sec. 255; see 3 Cal. 756.

[3] This provision is merely directory. Refusal to sign is not punishable under the Penal Code, sec. 180; see 4 Bom. 15.

[4] As to the effect of not fully complying with the provisions of this section, see sec. 533 infra, and 12 Suth. Cr. 44. Omission to record in the vernacular questions asked in the examination of the accused does not necessarily render that examination inadmissible as evidence, 8 Cal. 618, n.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Panjáb may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court[1], or in English; and shall contain the point or points for determination, the decision thereon[2], and the reasons for the decision[3]; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced[4].

When the conviction is under the Indian Penal Code, and

[1] Sec. 556, infra.

[2] A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are commited for trial, 13 Suth. Cr. 50.

[3] 11 Cal. 449: followed in 13 Cal. 110.

[4] The Judge cannot declare that sentence of imprisonment shall run from a period prior to the conviction, 4 N. W. P. 9.

it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. Judgment in alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury [1].

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead [2]. Sentence of death.

No sentence of transportation shall specify the place to which the person sentenced is to be transported. Sentence of transportation.

369. No Court, other than a High Court [3], when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error [4]. Court not to alter judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars [5]:— Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the

[1] i. e. so much of the charge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection, 23 Suth. Cr. 32, col. 2.

[2] For form of warrant see Sched. V. No. 35.

[3] So far as affects the High Court this section applies merely to questions of law arising in its original criminal jurisdiction, which are reserved and subsequently disposed of under sec. 434 and the Letters Patent, 7 All. 672. As to reviewing or reconsidering interlocutory orders, see 8 Cal. 3. See sec. 434, infra.

[4] 14 Cal. 42. The High Court has no power under this section to review an order dismissing an application for revision made by an accused person, and the only remedy is by appeal to the prerogative of the Crown as exercised by the Local Government, 7 All. 672: 10 Bom. 176.

[5] 14 Cal. 174.

case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment[1], or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost[2].

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred[3].

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held[4].

[1] as a substantive sentence. Clause (*i*) does not apply to cases where imprisonment is only inflicted in default of payment of a petty fine, 14 Cal. 174.

[2] And see sec. 548, infra.

[3] See the Limitation Act, infra, Sched. II. Art. 150.

[4] The proposal that a copy of the judgment should be forwarded was rejected by the Select Committee, as its adoption would have involved needless labour.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death[1], the proceedings[2] shall be submitted to the High Court[3], and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury[4], the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him[5], or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

[1] Form of warrant of commitment, Sched. V. No. 34.

[2] including an English translation of the whole of the evidence and a statement whether or not the prisoner has signified his intention to appeal.

[3] without any recommendation to mercy, Mad. H. C. Pro., 3rd April, 1873, cited by Henderson.

[4] 19 Suth. Cr. 57.

[5] See 1 Bom. 639, as to the corresponding section (228) of the Code of 1872.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge[1] or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation[2], such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed[3]; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence

[1] Sec. 31, supra.

[2] See secs. 31 and 34, supra, and 6 Cal. 624, 9 Cal. 513.

[3] This enables the Sessions Judge to enhance the sentence.

has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

CHAPTER XXVIII.

OF EXECUTION.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary [1].

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found [2] to be pregnant [3], the High Court [4] shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life [5].

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment [6] in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

[1] For forms of warrant see Sched. V. Nos, 35, 36.

[2] By whom? There is no provision for pleading pregnancy, or for a jury of matrons or physicians, as in the N.Y. Crim. Pr. Code, § 500.

[3] i.e. with child. The Code, unlike the English law, does not require that the child be alive in the womb.

[4] not the Sessions Judge.

[5] Where a man sentenced to death attempted to commit suicide by cutting his throat, and there was a risk of decapitation if he were hung, the High Court commuted the sentence to transportation, 2 C. L. R. 215, cited by Henderson, p. 340.

[6] That except in the cases provided for by secs. 388, 401, and 426, the execution of a sentence of imprisonment cannot be suspended, see 3 Ben. Ap. Cr. 50.

Warrant with whom lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant[1] for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned[2].

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office[3].

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whip-

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the

[1] See the form, Sched. V. No. 37.

[2] That imprisonment and distress may be simultaneously ordered, see 9 Suth. Cr. 50. That imprisonment suffered in default of payment of a fine does not exempt the offender's property from distraint, see 3 Suth. Cr. 62.

A fine may be levied at any time within six years after the passing of the sentence, Penal Code, sec. 70.

[3] 9 Suth. Cr. 50,

whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence. ping, in addition to imprisonment.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs[1]; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan. Mode of inflicting punishment.

In no case shall such punishment exceed thirty stripes. Number of stripes.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):— Not to be executed by instalments.

(*a*) females; Exemptions.

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment. Whipping not to be inflicted if offender unwell.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped[2]. Stay of execution.

[1] Notifications under this section have been published by the Local Governments of Madras, Bombay, the Central Provinces, and British Burma; see Macpherson's *Lists*, 1884, pp. 127, 272, 505, 552.

[2] 3 Mad. H. C., Rulings, i.

Procedure if punishment cannot be inflicted under section 394.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment.

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Saving as to sections 396 and 397.

398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences [1].

Confinement of youthful offenders in reformatories.

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory [2] established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein [3].

All persons confined under this section shall be subject to the rules so prescribed.

[1] Act X of 1886, sec. 11.

[2] See Act V of 1876, secs. 7, 9.

[3] Rules for Reformatories have been made by the Local Governments of Bombay and British Burma; see Macpherson's *Lists*, 1884, pp. 194, 536.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled[1], the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted[1] may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will[1].

[1] Act X of 1886, sec. 11.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons [1], reprieves [2], respites or remissions of punishment.

Power to commute punishment.

402. The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine [3].

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction [4] for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237 [5].

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted

[1] As to this branch of the prerogative see 3 Inst. 233, and Hawk. P. C. b. 2, c. 37, s. 33. The code is silent as to pleading pardons.

[2] Hawk P. C. b. 2, c. 51, s. 8.

[3] And see the Prisoners Act, V of 1871, secs. 23, 24, 25.

[4] in British India?

[5] 8 Mad. 296.

by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section[1].

Illustrations.

(*a*) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts[2], with theft simply, or with criminal breach of trust.

(*b*) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) *A* is tried for causing grievous hurt and convicted. The person injured afterwards dies. *A* may be tried again for culpable homicide.

(*d*) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(*e*) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph three of this section.

(*f*) *A* is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of *B*. *A* may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) *A*, *B* and *C* are charged by a magistrate of the first class with, and convicted by him of, robbing *D*. *A*, *B* and *C* may afterwards be charged with, and tried for, dacoity on the same facts[3].

[1] And of course where the accused has been acquitted at a trial by a Court without jurisdiction he cannot plead this as an acquittal for the purposes of this section, 2 Suth. Cr. 10. See secs. 240 (withdrawal of charges), 308 (entry by Sessions Judge), and 345 (composition) for transactions amounting to acquittals.

[2] The words 'upon the same facts' should come next after 'charged.'

[3] For other illustrations see 7 Suth. Cr. 15 (where Peacock C.J. discusses the English plea of *autrefois acquit*): 7 Mad. 557: 8 Mad. 296: 7 Ben. Appx. 25.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.[1]

OF APPEALS.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force[2]. Unless otherwise provided, no appeal.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court. Appeal from order rejecting application under sec. 89.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate. Appeal from order requiring security for good behaviour.

[1] The provisions of this chapter apply, so far as they are applicable, to appeals under sec. 486, infra. Where no appeal lies, the High Court as a court of revision will in very exceptional circumstances exercise the powers of an appellate court; see sec. 439, infra, and 8 Bom. 197.

[2] Thus, no appeal lies from an order passed by a District Magistrate under sec. 123 requiring a person to be detained in prison until he should provide security for his good behaviour, 9 Cal. 879. No appeal lies from an order under sec. 22 of the Cattle Trespass Act, I of 1871, awarding compensation, 10 Bom. 230. No appeal lies to a District Magistrate from a sentence passed under chap. xviii, supra, by a Bench invested with first-class powers, 9 Cal. 96. No appeal lies from an order under sec. 488 for the payment of maintenance, 7 Suth. Cr. 10.

As to appeals to Her Majesty in Council, see 24 & 25 Vic. c. 104, sec. 11, and Charter, § 41 (Macpherson, p. 84). For the old law, see 7 Moore, I. A. 72 (where an appeal was allowed from a judgment of the Supreme Court at Calcutta in case of murder): 3 ibid. 468, 488. Where the High Court punishes for contempt committed by publishing a libel out of Court when the Court is not sitting, such a case is not a proper one for appeal to Her Majesty, L. R., 10 I. A. 171.

Appeal from sentence of second or third class Magistrate.

407. Any person convicted on a trial[1] held by any Magistrate of the second or third class[2], or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals[3], and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate[4] or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session;

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

[1] This does not include a person ordered under section 22 of the Cattle Trespass Act to pay compensation, 10 Bom. 230.

[2] or by a Bench of Magistrates invested with second or third class powers, 9 Mad. 36.

[3] First class Magistrates in charge of divisions in Sind were invested with such powers under the corresponding section (266) of the Code of 1872; see Macpherson's *Lists*, 1884, p. 210.

[4] This includes a District Magistrate invested with powers under sec. 30; 9 Cal. 513, 516.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held[1] by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court[2].

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees[3].

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence[4].

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or

[1] Where the Sessions Judge's judgment was in *form* a mere confirmation of the Assistant Magistrate's judgment and sentence, but in *substance* an original judgment, an appeal lies from it to the High Court, 2 Suth. Cr. 13, 19.

[2] The High Court cannot hear appeals from convictions by any other officers, such as e.g. the Superintendent of the Katák Tributary Mahâls, when the offence was committed outside British India, 9 Cal. 288.

[3] These words do not include a sentence of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid, 2 Mad. 30, 32.

[4] 5 Bom. 85.

more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on E. B. subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal in case of acquittal.

417. The Local Government may direct the Public Prosecutor[1] to present an appeal to the High Court from an original or appellate order of acquittal[2] passed by any Court other than a High Court[3].

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law[4].

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader[5], and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer

[1] Sec. 4, cl. (*m*), supra, p. 62.

[2] 24 Suth. Cr. 41.

[3] See sec. 423, clauses (*a*) and (*d*). Such appeal, when the order is passed in a case tried by a jury, lies on a matter of law only, 10 Cal. 1030. See sec. 418. Where the Sessions Judge disagrees with a verdict acquitting the prisoner but passes judgment in accordance therewith, an appeal lies under this section, 2 Cal. 273, but only on matter of law. As to the time within which appeals from acquittals must be presented, see the Limitation Act, Sched. II. art. 157. When an appeal comes on for hearing, the Public Prosecutor begins, 20 Suth. Cr. 33.

[4] So are omission to consider, and erroneously setting aside, relevant evidence. Nothing in sec. 418, or the rest of this chapter, affects the power conferred by sec. 307, supra, 9 All. 425.

[5] Sec. 4, cl. (*n*). But see 1 Mad. 304: 6 Bom. 14.

in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court[1].

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity[2] of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so[3].

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf[4], of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried[5] or committed for trial, as the case may be,

[1] Facilities, such as paper, pens, ink, and, if necessary, an amanuensis, should be given to the petitioner, 13 Suth. Cr. 69. So far as concerns the requirements of the Limitation Act, presentation to the officer in charge of the jail is equivalent to presentation to the Court, 9 Mad. 259.

[2] 5 Mad. 11.

[3] The powers conferred by this section should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under it, 8 All. 515.

[4] Notifications under this section have been issued by the Local Governments of Bengal, the Panjáb, the Central Provinces, British Burma, and Assam; see Macpherson *Lists*, 1884, pp. 361, 481, 515, 552, 658.

[5] 24 Suth. Cr. 24, col. 2.

or find him guilty and pass sentence on him according to law[1];

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial[2], or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him[3].

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court[4]:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable

[1] This clause applies only to the High Court, 7 Mad. 214. See sec. 417.

[2] 8 All. 14.

[3] That this section does not affect the power conferred by sec. 307, see 9 All. 425.

[4] 11 Cal. 449, where a Session Judge was held bound by sec. 367, supra.

to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail [1].

Appellate Court may take further evidence or direct it to be taken.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall for the purposes of Chapter XXV be deemed to be an inquiry.

Procedure where Appellate

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions

[1] 1 Cal. 281: 2 All. 340, 386.

Judges are equally divided.

thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final [1], except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant [2].

CHAPTER XXXII.

OF REFERENCE AND REVISION [3].

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Reserving questions arising in original jurisdiction of High Court.

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more

[1] 4 Bom. 101.

[2] The High Court may, nevertheless, call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it considers just, 2 Bom. 564.

[3] That a Joint Sessions Judge (sec. 9) cannot exercise the powers of a Sessions Judge under this chapter, see 9 Bom. 168; and see 9 Bom. 532.

Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the judge thinks fit, be admitted to bail,

and the High Court shall have power to review the case [1], or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit [2].

Power to call for records of inferior Courts.

435. The High Court [3] or any Court of Session [4], or District Magistrate [5], or any Sub-divisional Magistrate empowered by the Local Government in this behalf [6], may call for and examine the record of any proceeding before any inferior Criminal Court [7] situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court [8].

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon, as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings

[1] 2 Bom. 61.

[2] Where on the application of the prisoner's counsel a question is reserved under this section the prisoner's counsel has the right to begin, 8 Bom. 200. See 3 Bom. H. C., Cr. Ca. 20, 22 : 5 Bom. 338, 341.

[3] The High Court has under this section power to go into questions of fact, but it generally declines to exercise it, 10 Calc. 1049.

[4] 8 Cal. 644.

[5] 12 Cal. 473 : 8 Mad. 18 : 9 Bom. 100 : 7 All. 853.

[6] The Madras Government has empowered *all* its Subdivisional Magistrates in this behalf, Macph. *Lists*, 1884, p. 127.

[7] The District Magistrate may therefore call for the record of proceedings before a Magistrate of the First Class in his district, 9 Bom. 102, or a Sub-divisional Magistrate of the First Class, 8 Mad. 18. See sec. 17 supra, where the word used is 'subordinate'; but there cannot be subordination without inferiority. *Secus* 10 Cal. 268, 551 : 7 All. 134.

[8] See 2 Cal. 293 : 8 Cal. 580 : 24 & 25 Vic. c. 104, sec. 15.

under section 176 are not proceedings within the meaning of this section.

Power to order commitment.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session[1] or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial[2] upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged :

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made[3] :

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate[4] to him to make, and the District Magistrate[5] may himself make, or direct any subordinate Magistrate to make, further inquiry[6] into any complaint which has been dismissed

[1] As to the High Court, see 6 All. 40, and sec. 439, infra.

[2] The High Court will not interfere with the exercise of this discretionary power, 2 Suth. Cr. 44 : 7 ibid. 38.

[3] 22 Suth. Cr. 67 : 6 Mad. 372.

[4] The term 'inferior' is used in sections 435 and 436 because in both these sections the Court of Session and the District Magistrate are combined, and the Magistrates (other than the District Magistrate), though subordinate to the District Magistrate, are not so generally to the Court of Session. But in sec. 437 the District Magistrate being dealt with separately from the Court of Session, the use of the term 'inferior' is no longer necessary, and accordingly the term used is 'subordinate,' 8 Mad. 19.

[5] but not a Deputy Magistrate placed in charge of the current duties of the District Magistrate's office, 11 Cal. 236.

[6] i.e. an inquiry upon further materials, not a rehearing upon the same evidence, 10 Cal. 207, 1027 : 12 Cal. 552 : 8 Mad. 336 ; but see 10 Bom. 131 : 9 All. 52.

The 'further inquiry' should ordinarily be conducted by the Magistrate who first inquired into the case, 8 Mad. 299.

under section 203, or into the case of any accused person who has been discharged [1].

Report to High Court.

438. The Court of Session or District Magistrate [2] may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed [3], may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail [4] or on his own bond.

High Court's powers of revision.

439. In the case of any proceeding [5] the record of which has been called for by itself, or which has been reported for orders, or which otherwise [6] comes to its knowledge, the High Court may, in its discretion, exercise any of the powers [7] conferred on a Court of appeal by sections 195, 423, 426, 427 and 428 [8], or on a Court by section 338, and may enhance the sentence [9]; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429 [10].

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

[1] 6 All. 367. The order to make further inquiry sets aside a prior order of discharge, and leaves the inquiry before the Magistrate open (as it was before that order) to further evidence under sec. 252, and to decision under sec. 253 and subsequent sections of ch. xxi, 7 Mad. 456.

[2] but not a Joint Magistrate of a District, 14 Suth. Cr. 25. A District Magistrate who considers that there has been a miscarriage of justice in the Sessions Court should not report the case for orders under this section, but communicate with the Public Prosecutor, 9 All. 362.

[3] In the absence of such recommendation there seems no power to admit the accused to bail, 23 Suth. Cr. 40. But see sec. 498.

[4] Chap. xxxix, infra.

[5] whether judicial or non-judicial.

[6] 2 Mad. 38.

[7] Thus, it may annul a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter, 7 All. 135; and if it considers that the accused has been improperly discharged, it may order him to be committed for trial, 6 All. 40, and see 1 All. 139.

[8] But in non-appealable cases the High Court, except on very exceptional grounds, will not exercise under this section the powers of an Appellate Court, 8 Bom. 197.

[9] so as to alter its nature, 6 All. 622: 11 Cal. 530.

[10] Except in very exceptional instances, these powers will not be exercised in reference to questions of fact, 6 All. 485.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction[1].

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Statement by Presidency Magistrate of grounds of his decision.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

[1] But as to revising an order of acquittal, see 9 All. 134.

A Divisional Bench of a High Court has no power under this section to review its judgment pronounced in a criminal case, 10 Bom. 176: 7 All. 672; but see 8 Cal. 63, 72.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrates who may inquire into and try charges against E. B. subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or [1] Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject [2], shall inquire into or try any charge against an European British subject [2].

Judge presiding in Court of Session.

Assistant Sessions Judge.

444. No Judge presiding in a Court of Session, except the Sessions Judge [3], shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government [4].

Cognisance of offence committed by E. B. subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognisance of an offence committed by any European British subject in any case in which he could take cognisance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject

[1] Inserted by Act III of 1884, sec. 3.

[2] This means, and should be, 'shall inquire into or try any offence alleged to have been committed by an European British subject.' For the definition of this expression see sec. 4, cl. (*u*). As to proof of nationality, see Turnbull's case, 6 Mad. H. C. 7.

[3] Inserted by Act III of 1884, sec. 4.

[4] Nothing in sec. 443 or sec. 444 applies to proceedings against European British subjects in certain cases of contempt, sec. 480, infra.

accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences of Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or [1] Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees, or both [2].

And a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both [3].

When commitment is to be to Court of Session and when to High Court.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court [4].

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court [4].

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court [4] under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences of Court of Session on E. B. subjects.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

[1] Inserted by Act III of 1884, sec. 5.

[2] 4 All. 141.

[3] Added by Act III of 1884, sec. 5.

[4] See sec. 4, cl. (*i*), supra, p. 62; and in British Burma, see sec. 185, para. 2.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

450. *Repealed by Act III of* 1884, *sec.* 6.

451. In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

Mixed jury for trial of European British subjects.

451A. (1) In trials of European British subjects before a District Magistrate, any such subject may in a summons case, before he is heard in his defence under section 244, or in a warrant case, before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of E. B. subject to claim jury before District Magistrate.

(2) If a claim is made under subsection (1) in a summons case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any order as aforesaid, frame a formal charge.

(5) The provisions of sections 211, 216, 217, 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury[1] before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial[2].

(7) All Courts may construe any of the provisions referred to in subsection (5) or subsection (6), in so far as they are made applicable by that subsection with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447[3].

Transfer to another Court, in certain cases.

451 B. (1) If an accused person claims to be tried by jury under section 451 A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451 A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under sections 451 A[4].

Trial of E. B. subject and

452. In any case in which an European British subject is accused jointly with a person not being an European British

[1] This refers generically to the 'class of cases triable by a Sessions Judge with the help of a jury, and their trial, as contradistinguished from those tried with the help of assessors or in any other manner mentioned in the Code,' 9 All. 424, per Straight J.

[2] The effect of this clause is to confer on the District Magistrate precisely the same authority as the Sessions Judge has, under sec. 307, to submit a case when he disagrees with the jury, 9 All. 424.

[3] Added by Act III of 1884, sec. 8.

[4] Added by Act III of 1884, sec. 8.

subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately: Native jointly accused.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII. When Native may claim separate trial.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall [1] inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him. Procedure on claim of person to be dealt with as E. B. subject.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried Failure to plead status a waiver.

[1] before going into the case, 4 All. 141.

or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject [1], and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not [2].

Trial under this chapter of person not an E. B. subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of E. B. subject unlawfully detained to apply to be brought before High Court.

456. When any European British subject [3] is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

[1] i. e. as regards the tribunal, the procedure, and (if convicted) the punishment, 6 Cal. 83, 87.

[2] *Re Foy*, 1 Tayl. & Bell, 219. But omission to ask this question will not affect the validity of any proceeding, sec. 534. It must however appear that the European British subject's rights have been distinctly made known to him and that he was enabled to exercise his choice and judgment whether he would or would not claim them, 6 Cal. 83, 87, 88.

[3] This section does not apply to Natives, 1 All. 1, 5.

Territories throughout which High Court may issue such orders.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct[1].

Acts conferring jurisdiction on Magistrates or Court of Session.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein[2].

Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session[3] not being a Justice of the Peace[2].

Jury for trial of Europeans or Americans.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury when European or American charged jointly with one of another race.

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Summoning and empanelling jurors under s. 451 or 460.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section 451 A

[1] See the five notifications, dated respectively 23 Sept. 1874, issued by the Governor General in Council under 28 Vic. c. 15, sec. 3, *Gazette of India*, 1874, p. 486, and a sixth notification, dated 18 Dec. 1874, ibid., p. 612. See also 9 Bom. 288, 333, and 5 Mad. 333.

[2] See 5 Mad. H. C. 277.

[3] Inserted by Act III of 1884, sec. 9; which section also repealed the last sixteen words of sec. 459 of Act X of 1882.

or 451 B [1], the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Prosecution of Europeans and Americans.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

Procedure where accused appears insane to Magistrate.

464. When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs [2], and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

[1] Added by Act III of 1884, sec. 10.

[2] See notifications by the local Governments of Madras, Bombay, and Assam, Macpherson, *Lists*, 1884, pp. 114, 233, 658.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case [1].

Procedure where person committed before Court of Session or High Court appears insane.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity [2], and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government [3], and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order [4].

Resumption of inquiry or trial.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

[1] and report the case to the Local Government, 1 Suth. Cr. 11. Where the accused, though not insane, cannot be made to understand the proceedings, see sec. 341, supra.

[2] 10 Ben. Appx. 10.

[3] 6 Suth. Cr. 3, col. 2.

[4] And thereupon the authority of the Magistrate or Court over the lunatic ceases and does not revive until he is taken back under sec. 473; see 2 Cal. 356.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law[1], the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not[2].

[1] See the Penal Code, sec. 84; vol. I. p. 117.

[2] See for a form of such finding, 8 Suth. Cr. Letters, 19. Where the jury finds that the accused was insane at the time at which he is alleged to have committed an offence, the High Court will not interfere with the verdict except upon the clearest evidence that the jury was mistaken, 19 Suth. Cr. 45.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

Lunatic prisoners to be visited.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner reported capable of making defence.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under s. 466 or 471 declared fit for discharge.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been

already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Governor General in Council may remove criminal lunatics from one province to another.

475 A. The Governor General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India [1].

Local Government may relieve Inspector General of certain functions.

475 B. The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector General of Prisons under section 472, section 473, or section 474 [1].

[1] Act X of 1886, sec. 12.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in s. 195.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary [1], may send the case for inquiry or trial to the nearest Magistrate of the first class [2], and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorised under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate [3].

Power of Court of Session as to such offences committed before itself.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding [4], and may commit, or admit to bail and try, such person upon its own charge [5].

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil and Revenue

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice [6] of any

[1] to satisfy the Court that there is ground for etc., 7 Mad. 189, 190: 5 All. 62: 6 All. 98, 114. The preliminary inquiry need not be conducted in presence of the accused, 9 Suth. Cr. 3, or extend to all the persons who may be implicated in the offence, 7 Mad. 224.

[2] 13 Suth. Cr. 45.

[3] And he may discharge the accused if he thinks the evidence not sufficient to warrant committal, 5 Bom. H. C., Cr. 41. Sec. 476 is intended to avoid the inconvenience which would be caused if a Judge were obliged to appear before a Magistrate and make a complaint on oath in order to lay a foundation for a prosecution, 7 All. 871.

[4] 6 All. 103.

[5] A District Judge who has, as such, sanctioned a prosecution for forgery, may, in his capacity as Sessions Judge, try the offence, 6 Bom. 479.

[6] 4 Ben. Ap. Cr. 9.

Courts to complete investigation and commit to High Court or Court of Session.

Civil or Revenue Court in the course of a judicial proceeding [1], and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil Court in such cases.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if he thinks fit, take cognisance of the offence and sentence the offender to fine not exceeding two hundred rupees [2], and, in default of payment, to simple imprisonment [3] for a term which may extend to one month, unless such fine be sooner paid.

[1] 6 All. 103.

[2] For form of warrant of commitment see Sched. V. No. 38.

[3] Such imprisonment does not relieve the offender from liability to have the fine levied by distress and sale, 3 Suth. Cr. Letters, 21.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section [1].

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence [2].

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under s. 480.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar to be deemed a Civil Court.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482 [3].

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his sub-

[1] An appeal lies from orders under it, sec. 486 infra.

[2] 4 Mad. H. C. 229.

[3] 13 Ben. Appx. 40.

mission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him [1], or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant [2] under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid [3] may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

[1] 3 Mad. 271.

[2] See form of warrant, Sched. V. No. 39.

[3] See sec. 483.

Certain Judges and Magistrates not to try offences referred to in s. 195 when committed before themselves.

487. Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon and the Presidency Magistrates[1], shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority[2], or is brought under his notice[3] as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN[4].

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife[5] or his legitimate or illegitimate child[6] unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class[7] may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate[8], not exceeding fifty rupees in the whole, as such Magis-

[1] 1 Mad. 305.

[2] The District Court and Sessions Court are essentially distinct Courts, though presided over by the same officer. There is nothing, therefore, to debar a District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery, from trying the offence in his capacity of Sessions Judge, 6 Bom. 479 (on sec. 473 of the Code of 1872).

[3] 4 Ben. App. Jur. Cr. 11.

[4] So an Assistant Sessions Judge is a different Court from the Sessions Judge, 11 Bom. H. C. 98.

[5] As to what is a 'wife' for the purpose of this section, see 4 N. W. P. 128 (*Karao*-marriage among Játs). The question is, whether the form of marriage that has been gone through is sufficient to enable the offspring of the union to inherit.

[6] No order can be passed under this section for the maintenance of a fœtus of which a woman is believed to be pregnant, 3 N. W. P. 70, and 'child' does not include 'step-child.' There is no law in India like 4 & 5 Wm. IV. c. 76. sec. 57.

[7] i. e. the Magistrate of the particular area in which the husband or father resides, 9 Bom. 45.

[8] The Magistrate may alter this, from time to time, under sec. 489. But he cannot in the first instance make an order at a progressively increasing rate, 2 N. W. P. 454: 12 Cal. 535.

trate thinks fit, and to pay the same to such person as the Magistrate from time to time directs[1].

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant[2] for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment[3] for a term which may extend to one month[4]:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him[5], and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her[6]; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery[7], or that without sufficient reason she refuses to live with her husband, or that

[1] The Magistrate cannot enter into any question as to the lawful guardianship of a child, 4 Cal. 374. Where the claim for maintenance had been released, the Magistrate should not enforce the order, 10 Mad. 13.

It will be observed that sec. 488, like the Contract Act, sec. 68, illustration *b*, assumes that husbands and parents are under a legal obligation to support their wives and children. That a wife residing with her husband has a right to be maintained by him, see 9 Bom. 45. But, apart from the personal laws of the Natives, there seems to be in India no express civil obligation on the part of a father to maintain his child. So in England, *Bazeley* v. *Forder*, L. R., 3 Q. B. 559, per Cockburn C.J.

[2] See form, Sched. V. No. 41.

[3] simple or rigorous.

[4] Such a sentence is absolute and the imprisonment does not cease on payment, 8 Mad. 70. See also 9 All. 240. For a form of warrant of imprisonment on failure to pay maintenance, and of a warrant to enforce the payment by distress and sale, see Sched. V. Nos. 40, 41.

[5] A Hindú must offer to 'maintain' his wife as part of his family and to 'live' with her as a husband lives with his wife, 6 Mad. 371, 372.

[6] A Hindú husband's marriage of a second wife is not a sufficient ground, 7 Mad. 187.

[7] 8 Bom. Cr. Ca. 124: 5 All. 224.

they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chaper shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases[1].

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Enforcement of order of maintainance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable[2] by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due[3].

[1] A Hindú marriage of a man reverting from Christianity to Hindúism is not void in consequence of a previous Christian marriage, 4 Mad., H. C. Rulings, iii. The Hindú as well as the Christian wife of such a person is therefore entitled to maintenance under this section.

As to the High Court's power to revise orders made under this section, see 20 Suth. Cr. 58, 5 Bom. H. C., Cr. Ca. 81.

Of course section 488 does not deprive a wife of any remedy in the Civil Courts which she would otherwise have had against her husband, 6 Suth. Civ. R. 57, col. 2.

[2] This does not deprive the Magistrate of his jurisdiction under section 488. When the person against whom the order is made is beyond his jurisdiction he may, in his discretion, issue a warrant under section 488, or refer the applicant to a Magistrate having jurisdiction under section 490; 4 Mad. 230.

[3] The order does not deprive a Muhammadan husband against whom it is made of his right to divorce his wife, and after such divorce the order cannot be enforced (7 Bom. 180), except as to the interval between the date of the order and the divorce (19 Suth. Cr. 73), and except during the period of *iddat*, i. e. three months in the case of a non-pregnant woman; the period of gestation, if she be pregnant, 5 All. 226. More as to orders of maintenance of Muhammadan wives, 8 Bom. H. C., Cr. Ca. 95: 5 Cal. 558: 8 Cal. 76. Under the Shia law, *muta* wives are not entitled to maintenance; but this does not affect their statutory right under chap. xxxvi, 8 Cal. 736.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment[1].

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section[2].

Saving of laws relating to State prisoners.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

[1] As to the power of the late Supreme Courts to grant writs of *habeas corpus*, see 1 Knapp, 1. This chapter seems not to affect the English prerogative writ of *habeas corpus ad subjiciendum*, which runs into all parts of British India. The prohibition in 25 & 26 Vic. c. 20 does not apply, as there never has been a court in British India 'having authority to grant and issue the said writ and to ensure the due execution thereof, *throughout such . . . dominion*.'

[2] See the rules made by the High Court at Fort William under the corresponding section of Act X of 1875, *Gazette of India*, Part II, 12 Aug. 1876, p. 397.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors [1].

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Public Prosecutor may plead in any Court.

Pleaders under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions [2].

Effect of withdrawal from prosecution.

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government [3] may, with the consent of the Court, in cases tried by jury before the return

[1] Sec. 4, cl. (*m*), supra, p. 62. The Bengal Government has appointed all Government pleaders in the Lower Provinces to be public prosecutors, *Calcutta Gazette*, 23 Nov. 1881, Part I, p. 1026.

[2] As to his duty to call and examine witnesses, see 7 All. 904, 8 Cal. 121; and as to the mode in which he should perform his functions, see 8 Bom. H. C., Cr. Ca. 126, 153, per Westropp C.J.

[3] but not one appointed under sec. 492 by the District Magistrate or Subdivisional Magistrate, 8 All. 291.

of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Permission to conduct prosecution.

495. Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council[1]; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted[2].

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence[3] is arrested or detained without warrant by an officer in charge of a police-station[4], or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person,

[1] Act X of 1886, sec. 13. See 13 Suth. Cr. 18.

[2] This section did not supersede the provision of Bom. Act VII of 1867, sec. 23, which authorised a police officer to prosecute offenders up to final judgment. But that provision was repealed by Act X of 1886, sec. 20.

[3] Sec. 4, cl. (*r*), supra, p. 63.

[4] Sec. 4, cl. (*o*), supra, p. 63.

discharge him on his executing a bond without sureties for his appearance as hereinafter provided [1].

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person [2] be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Bond of accused and sureties.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be [3].

[1] For forms see Sched. V. No. 42. And see sec. 513, infra, as to taking a deposit in lieu of a bond.

[2] even a convicted person; see 1 All. 151 as to the former law.

[3] See form of bond, Sched. V. No. 42.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Discharge from custody.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail [1], and such officer on receipt of the order shall release him.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Discharge of sureties.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

[1] See form, Sched. V, No. 43.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

When attendance of witness may be dispensed with.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience[1] which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer[2].

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code[3].

Commission where witness in Presidency-town.

504. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attend-

[1] This empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country, ought not to appear in public, 5 All. 92. The Calcutta High Court has been supposed to have held that a *pardanashin* is of right exempted from personal attendance in Court (ibid., citing 4 Cal. 20). But this is only the reporter's headnote, and refers to mere witnesses. Certainly there is no such exemption where she is a complainant.

[2] The Courts have no power to issue commissions out of the jurisdiction except in cases provided for by this section, 5 Bom. 338.

[3] Chapter xxi, supra.

ance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application[1]; and the District Magistrate may either issue a commission in the manner hereinbefore[2] provided or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions[3], be read in evidence in the case by either party, and shall form part of the record[4].

[1] He should also state the nature of the alleged offence, the state of the proceedings, and the name of the witness; see N.Y. Code of Crim. Proc. § 639.

[2] Sec. 503.

[3] i. e. the same objection may be taken to a question in the interrogatories, or to an answer in the deposition, as if the witness had been examined orally in court.

[4] If in taking evidence by commission a document is tendered and ob-

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. Adjournment of inquiry or trial.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused [1], may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness [2]. Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition. Power to summon medical witness.

510. Any document purporting to be a report [3] under the hand of any [4] Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. Report of Chemical Examiner.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,— Previous conviction or acquittal how proved.

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

jected to on any ground, the opposite party is not thereby precluded from objecting to the document at the trial on any other ground, 9 Cal. 939.

[1] 8 Cal. 739, 745.

[2] Whether he is called or not, his deposition is admissible, 8 Cal. 739. That a medical officer's report not given on oath is not evidence has often been decided in India (see 11 Suth. Cr. 2, col. 2: 12 Suth. Cr. 25). But in giving evidence he may refresh his memory by referring to a report which he has made of his *post mortem* examination, 9 Cal. 455.

[3] i.e. the original, not a copy, 6 Ben. Appx. 122.

[4] Act X of 1886, sec. 14. See 10 Cal. 1026, by which this amendment was suggested.

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. If it be proved[1] that an accused person has absconded, and that there is no immediate prospect of arresting him[2], the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable[3].

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognisance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code[4] has been taken, or of

[1] i.e. alleged, tried, and established, 10 Cal. 1097.

[2] See 21 Suth. Cr. 12.

[3] 8 All. 672, 675. See the Evidence Act, sec. 33, and 6 All. 224.

[4] There is no provision in the Code authorising a police-officer to take security for the production of any person before the police. Such a bond is void, and there is no power to alter it under this section, 11 Cal. 78.

the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court to the satisfaction of such Court,

that such bond has been forfeited [1], the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid [2].

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant [3] for the attachment and sale of the moveable property belonging to such person [4].

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate [5] within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months [6].

The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Appeals from, and revision of, orders under s. 514.

515. All orders passed under section 514 [7] by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

[1] Due execution, as well as forfeiture, must be proved, 11 Cal. 78. In the case of a bond to keep the peace the Magistrate must record evidence in the presence of the person bound, proving that he was about to do something which would cause a breach of the peace, 3 Ben. Appx. 155, and the person bound ought to have had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause has been issued, 4 Cal. 865.

[2] See forms of notice, Sched. V. Nos. 45, 46, 49.

[3] See forms, Sched. V. Nos. 47, 50, 52.

[4] In the case of a surety, he must be called on to show cause why he should not pay the penalty mentioned in his bond, and the record must clearly show that he had such notice, 15 Suth. Cr. 82.

[5] Act X of 1886, sec. 4.

[6] See forms of warrant of imprisonment, Sched. V. Nos. 51, 53.

[7] even in the case of a bond to keep the peace. See 2 Mad. 169 as to the former law.

Power to direct levy of amount due on certain recognisances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit[1] for the disposal of any document or other property produced before it[2] regarding which any offence appears to have been committed, or which has been used for the commission of any offence[3].

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay[4]) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

Explanation.—In this section the term 'property' includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have

[1] This discretionary power would not of course enable the Court to bestow the property in charity, Mad. H. C. Pro. 20 July, 1875, cited by Henderson, p. 457.

[2] 19 Suth. Cr. 3.

[3] For example, counterfeit coins, instruments used for coining, false weights and measures. If the District Magistrate thinks such an order improper, he should direct it to be stayed, under sec. 520, 8 Bom. 575.

[4] See sec. 525, infra.

been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise [1].

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him [2].

Stay of order under section 517, 518 or 519.

520. Any Court of appeal [3], confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter or annul such order.

Destruction of obscene, libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274, or

[1] It includes property produced by a witness as well as property seized by the police or found in possession of the accused. See 9 Mad. 449, 12 Bom. H. C. 217. But it does not include a stolen cow's calf born a year after the theft, 10 Mad. 25. As to stolen currency notes which had been delivered to *bona fide* holders for value, see 3 Cal. 379. As to money, 7 Mad. H. C. 233.

[2] Founded on 30 & 31 Vic. c. 35. s. 9.

[3] This does not necessarily mean a Court before which an appeal is pending, 3 Cal. 379: 9 Mad. 449.

section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same[1].

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Procedure by police upon seizure of property taken under s. 51 or stolen.

523. The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof[2], or if such person cannot be ascertained, respecting the custody and production of such property[3].

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the magistrate may detain it, and shall, in such case, issue a proclamation[4] specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation[5].

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the

[1] 23 Suth. Cr. 54, per Phear J.

[2] Not necessarily the person from whom the property was taken, 8 Bom. 338. Compare 2 & 3 Vic. c. 71. s. 29. Of course the order does not conclude the right of any one, and the real owner may sue the holder of the property, 9 Bom. 131.

[3] Statements made to the police by the accused as to the ownership of the property are admissible under this section, 9 Bom. 131.

[4] See sec. 87 and 2 All. 276.

[5] The Magistrate must summon the witnesses named by the claimant and take due steps to secure their attendance, 18 Suth. Cr. 5.

Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale [1].

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto [2], or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice [3],

it may order—

[1] As to orders made *bona fide* under this section by Magistrates not empowered to make them, see sec. 529 (*h*).

[2] 9 Bom. 172, 333: 6 Cal. 491: 7 Cal. 322: 5 Mad. H. C. 212: 9 Mad. 356. Before transferring a case against the wish of the accused, the High Court requires the very best evidence that a fair trial cannot be had where the case is ordinarily triable, 6 Cal. 491.

[3] Inserted by Act III of 1884, sec. 11. Clause (*e*) would clearly cover such a case as that in 9 Bom. 333, where the High Court transferred to itself a case of defamation from the Cantonment Magistrate's Court at Sikandarábád on the ground that no machinery for a trial by jury existed at Sikandarábád.

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority [1] to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself; or

(4) that an accused person be committed for trial to itself or to a Court of Session [2].

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation [3].

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under sec. 526.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

Adjournment on application under section 526.

526 A. If in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant, or the accused notifies to the Court before which the

[1] 9 Mad. 356.

[2] Inserted by Act III of 1884, sec. 11.

[3] 1 Cal. 219: 8 Cal. 63: 9 Cal. 397.

case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal [1].

Power of Governor General in Council to transfer criminal cases and appeals.

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Sub-divisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case [2] from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same [3].

Power to authorise District Magistrate to withdraw classes of cases.

The Local Government may authorise the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases [4].

A Magistrate making an order under this section shall record in writing his reason for making the same [5].

[1] Inserted by Act III of 1884, sec. 11.

[2] 8 Cal. 851.

[3] When a case under trial is removed under this section, the whole proceedings must commence *de novo*, 24 Suth. Cr. 53.

[4] See the *Panjáb Gazette*, 8th Feb. 1883, Part I, p. 52, and the *British Burma Gazette*, 1873, Part II, p. 5.

[5] Added by Act III of 1884, sec. 13. Where a Magistrate not empowered in this behalf erroneously but in good faith withdraws a case and tries it himself under sec. 528, see sec. 529.

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely—

(*a*) to issue a search-warrant, under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognisance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338 [1];

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely)—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*) makes an order, under section 133, as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII;

[1] 8 Cal. 560.

(*k*) takes cognisance, under section 191, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises under section 515, an order passed under section 514;

(*p*) tries an offender[1];

(*q*) tries an offender summarily[2]; or

(*r*) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court[3] shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Subdivision or other local area[4], unless it appears that such error occasioned a failure of justice.

When irregular commitments may be validated.

532. If any Magistrate or other authority[5] purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority[6].

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate[7].

533. If any Court before which a confession or other

[1] If the offender is acquitted he may be retried at once, 8 Bom. 307.

[2] 4 Cal. 18.

[3] This includes an order of a Magistrate committing a case to a Court of Session having no territorial jurisdiction, 8 Bom. 312.

[4] See 13 Ben. Appx. 4.

[5] 9 Bom. 299.

[6] 8 Cal. 985. And see 7 Cal. 662, where the High Court refused to set aside a conviction on an improper commitment.

[7] See 21 Suth. Cr. 37: 4 Mad. 227: 5 Mad. 23.

Non-compliance with provisions of s. 164 or 364.

statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded[1]; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Omission to ask question prescribed by s. 454, cl. 2.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding[2].

Sentence when reversible by reason of error in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction[3] shall be reversed or altered under Chapter XXVII, or on appeal or revision, on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings

[1] For a case in which it was held unnecessary to take evidence under this section, see 14 Cal. 539, following 8 Cal. 618 n.

[2] See 3 Cal. 765.

[3] i. e. in respect of the particular offence charged, 10 Bom. 320, 325. As to orders etc. of Magistrates and Courts without jurisdiction, see secs. 530, 531, 532, etc.

before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195[1], or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury;

unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice[2].

Distress not illegal for defect in proceedings.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorised to take affidavits or affirmations in Scotland.

[1] As to want of sanction under sec. 132 or 197, see 9 Bom. 288.

[2] 14 Cal. 128. See for illustrations 1 Suth. Cr. 16 (Deputy Magistrate proceeding by warrant instead of summons): 19 Suth. Cr. 7 (omission by Deputy Magistrate to draw up charge): 1 All. 610 (acquittal by Court sitting with assessors without asking their opinion): 11 Bom. 237 (omission of prisoner's pleader to object to admissibility of his statement): 7 Cal. 662 (Sessions Judge's wrong order to commit person discharged by Deputy Magistrate, without first giving him opportunity to show cause. But see 14 Ben. 54, where the Magistrate omitted to hold a preliminary inquiry on a charge under sec. 307 of Penal Code; 3 All. 392, where the trying Magistrate rejected the prisoner's application that a certain person might be examined on his behalf, and did not record the reasons for rejection; and 13 Cal. 272, where a Presidency Magistrate passed a sentence of six months' rigorous imprisonment, but omitted to record his reasons for the conviction.

Power to summon material witness, or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined [1]; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case [2].

Power to appoint place of imprisonment.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined [3].

Removal to criminal jail of persons confined in civil jail.

541 A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(2) When a person is removed to a criminal jail under subsection (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure [4]; or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure [5].

Power of Presidency Magistrate

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869 [6], any Presidency Magistrate desirous of

[1] Compare the Evidence Act, sec. 165. The Court should not refuse to allow the prisoner to cross-examine a witness called by it, 5 Cal. 614.

[2] 8 All. 668.

[3] Notifications under this section or the corresponding section of the Code of 1872 have been issued as to European British subjects by the Local Governments of Madras, Bombay, the Lower Provinces and the Panjáb. All central jails in Bengal and the central prison at Lucknow have been appointed as places to which persons under sentence of transportation may be sent. See Macpherson's *Lists*, 1884, pp. 209, 481, and Henderson, pp. 477, 478.

[4] Act XIV of 1882, infra.

[5] Act X of 1886, sec. 15.

[6] Act XV of 1869.

examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination. to order prisoner to be brought up for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement [1], he shall be bound to state the true interpretation of such evidence or statement. Interpreter to interpret truthfully.

544. Subject to any rules made by the Local Government [2] with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code. Expenses of complainants and witnesses.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order [3] the whole or any part of the fine recovered to be applied— Power of Court to pay expenses or compensate out of fine.

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation [4] for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

[1] See sec. 361 supra, and the Oaths Act, X of 1873, sec. 5.

[2] See the Notifications by the Local Governments of Bombay, Bengal, the N. W. Provinces, the Panjáb, Oudh, Burma, Coorg, Assam, Macpherson's *Lists*, 1884, pp. 216, 233, 340, 348, 430, 461, 491, 552, 576, 648, 686.

[3] 2 Suth. Cr. 58, col. 2: 11 Suth. Cr. 53, col. 2.

[4] to the person who has suffered by the offence, 6 Suth. Cr. 93; but not, for example, to an amín for the purpose of defraying the expense of deputing him to restore destroyed landmarks, ibid.; nor to the heirs of one who has been killed, 10 Suth. Cr. 39; nor to the innocent purchaser of property found to have been stolen, 6 Mad. 286: 4 Mad. H. C., Appx. xxviii: 7 Mad. H. C., Appx. xiii.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be considered in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account [1] any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money [2] (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order [3] passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to Military authorities of persons liable to be tried by Court-martial.

549. The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer or any body of troops stationed or employed at any such place, use his utmost

[1] i. e. take into consideration, 22 Suth. Civ. 336.

[2] e. g. maintenance, sec. 481.

[3] e. g. a prosecutor whose charge is dismissed, 8 Cal. 166.

endeavours to apprehend and secure any person accused of such offence.

Powers of superior officers of police.

550. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station [1].

Power to compel restoration of abducted females.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose [2], he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Compensation to person groundlessly given in charge in Presidency-town.

552. Whenever any person causes a police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against [3], the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High

553. With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the

[1] 7 Bom. 42.

[2] Some words such as 'within the local limits of his jurisdiction' have been here omitted *per incuriam*.

[3] The words 'or complained against' were left in *per incuriam*.

Courts to make rules for inspection of records.

previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Forms.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require[1], shall be used for the respective purposes therein mentioned.

Case in which Judge is personally interested.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested[2], and no Judge or Magistrate shall

[1] 10 Cal. 937.

[2] This agrees with the English common-law that a justice who has any interest (no matter how small) in the result of proceedings is disqualified from acting, *The Queen* v. *Meyer*, L. R., 1 Q. B. D. 173, 176, per Blackburn J.

In 2 Cal. 23 the Court thought that a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and he himself discovered the offence and was one of the principal witnesses for the prosecution. And see 3 Cal. 622. Where a servant is the complainant, it is inex-

hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner[1].

Power to decide language of Courts.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter[2].

Powers of Government exercisable from time to time.

557. All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised, from time to time, as occasion requires.

Pending cases.

558. The provisions of this Code shall apply, so far as may be[3], to all cases pending in any Criminal Court when this Code comes into force.

Officers concerned in sales not to purchase.

559. A public servant having any duty to perform in connection with the sale of any property under this Code[4] shall not purchase or bid for the property[5].

pedient that his master should try the case, 9 Bom. 172. See also 8 Ben. 422, where the Magistrate tried a case instituted by him as Sub-registrar. But see 4 Q. B. D. 332 : 6 Q. B. D. 168.

[1] 10 Cal. 1030: Ben. Act III of 1885, sec. 141. But a conviction of an offence against a municipal regulation, by a Bench which includes a *salaried* officer of the municipality, is bad, 10 Cal. 194.

[2] Thus Canarese is the language of the criminal Courts in the district of Belgaum, Urdu of those in the Panjáb; and see the Notifications in Macpherson's *Lists*, 1884, pp. 216, 481, 504, 686.

[3] This does not authorise the application of the Code so as to vitiate a trial, and sec. 6 of the General Clauses Act (supra, vol. i. p. 490) prevents proceedings already commenced being affected by the repeal of the old Code, 6 Mad. 338.

[4] secs. 88, 524, 525.

[5] Added by Act X of 1886, sec. 16.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a*).—*Statute.*

Year, reign and chapter.	*Title.*	*Extent of repeal.*
13 Geo. III, chapter 63.	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(*b*.)—*Acts of the Governor General in Council.*

Number and year.	*Subject.*	*Extent of repeal.*
XXIII of 1840	Execution of process	So much as has not been repealed.
XLV of 1860	Penal Code	The illustrations to section 214.
V of 1861 ...	Police Act	Section 6 and the last nine words of section 24 [1].
		Section 35, down to and including the words 'Provided that.'
XVIII of 1862	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI of 1864 ...	Whipping	Section 7.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulation XX of 1825.
X of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Bengal Regulation XX of 1825.

[1] The power which Act V of 1861, sec. 24, confers on the police to lay informations and apply for summonses and other legal processes, remains intact.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—*continued.*

(*b*).—*Acts of the Governor General in Council*—continued.

Number and year.	*Subject.*	*Extent of repeal.*
X of 1875 ...	High Courts' Criminal Procedure.	The whole Act, except section 144 and so much of section 146 as relates to informations[1].
XX of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX of 1825.
XVIII of 1876	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57[2].
XXI of 1879	Extradition	Chapter III.
X of 1881 ...	Coroners	Sections 8 and 9.

(*c*).—*Regulations.*

Number and year.	*Subject.*	*Extent of repeal.*
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial	So much as has not been repealed.
III of 1872 ...	Santhál Parganas Settlement...	So far as it relates to Act X of 1872.
IX of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II of 1869, X of 1872, and XI of 1874.
III of 1877 ...	Ajmer Laws	So far as it relates to Bengal Regulation XX of 1825.

(*d*).—*Act of the Governor of Fort St. George in Council.*

Number and year.	*Subject.*	*Extent of repeal.*
VIII of 1867	Police	Section 9.

[1] See the excepted portions, infra, Appendix E.

[2] See the excepted section, infra, Appendix to the Court Fees Act.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively 'Offence' and 'Punishment under the Indian Penal Code,' are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even

SCHEDULE II.

CHAPTER V.

CHAPTER V.—ABETMENT.

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto ... ...
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto	Ditto ... ...
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto	Ditto ... ...
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	Ditto ... ...
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	Ditto ... ...
	If an act which causes harm be done in consequence of the abetment.	Ditto	Ditto ... ...
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	Ditto ... ...

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER V *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	Ditto ... ...
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be punishable with death or transportation for life.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	Ditto ... ...
	If the offence be not committed.	Ditto	Ditto ... ...

CHAPTER VI.

CHAPTER VI.—OFFENCES

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant.

SCHEDULE II *continued.*

CHAPTER V *continued.*

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.

AGAINST THE STATE.

Not bailable.	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.

SCHEDULE II *continued.*

CHAPTER VI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
121A	Conspiring to commit certain offences against the State.	Shall not arrest without warrant.	Warrant ... ...
122	Collecting arms etc. with the intention of waging war against the Queen.	Ditto	Ditto ... ...
123	Concealing with intent to facilitate a design to wage war.	Ditto	Ditto ... ...
124	Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Ditto	Ditto ... ...
124A	Exciting, or attempting to excite, disaffection.	Ditto	Ditto ... ...
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto	Ditto ... ...
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto	Ditto ... ...
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto	Ditto ... ...
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto	Ditto ... ...
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	Ditto ... ...
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	Ditto ... ...
131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Court of Session.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II *continued.*

CHAPTER VI *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	May arrest without warrant.	Warrant ... ...
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto	Ditto ... ...
134	Abetment of such assault, if the assault is committed.	Ditto	Ditto ... ...
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto	Ditto ... ...
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto	Ditto ... ...
137	Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons... ...
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ... ...
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto	Summons... ...

CHAPTER VIII.

CHAPTER VIII.—OFFENCES AGAINST

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons... ...
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	Warrant ... ...
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	Ditto ... ...
147	Rioting	Ditto	Ditto ... ...
148	Rioting, armed with a deadly weapon.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable	Not compoundable.	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees... ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

THE PUBLIC TRANQUILLITY.

Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II *continued.*

CHAPTER VIII *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto	Summons ... ...
152	Assaulting or obstructing public servant when suppressing riot, etc.	Ditto	Warrant ... ...
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto	Ditto ... ...
	If not committed	Shall not arrest without warrant.	Summons ...
154	Owner or occupier of land not giving information of riot, etc.	Ditto	Ditto ... ...
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	Ditto ... ...
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	Ditto ... ...
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ... ...
158	Being hired to take part in an unlawful assembly or riot.	Ditto	Ditto ... ...
	Or to go armed.	Ditto	Warrant ... ...
160	Committing affray.	Shall not arrest without warrant.	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
According as the offence is bailable or not.	Not compoundable.	The same as for the offence.	The Court by which the offence is triable.
Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ..	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

SCHEDULE II *continued.*

CHAPTER IX.

CHAPTER IX.—OFFENCES BY

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto	Ditto ... ...
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto	Ditto ... ...
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto	Ditto ... ...
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto ... ...
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	Ditto ... ...
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	Ditto ... ...
168	Public servant unlawfully engaging in trade.	Ditto	Ditto ... ...
169	Public servant unlawfully buying or bidding for property.	Ditto	Ditto ... ...
170	Personating a public servant ...	May arrest without warrant.	Warrant ... ...
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	Summons ...

OR RELATING TO PUBLIC SERVANTS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...
	If summons or notice require attendance in person etc. in a Court of Justice.	Ditto	Ditto ... ...
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto	Ditto ... ...
	If summons etc. require attendance in person etc. in a Court of Justice.	Ditto	Ditto ... ...
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto	Ditto ... ...
	If the order require personal attendance etc. in a Court of Justice.	Ditto	Ditto ... ...
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	Ditto ... ...
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	Ditto ... ...
176	Intentionally omitting to give notice or information to a public servant legally bound to give such notice or information.	Ditto	Ditto ... ...
	If the notice or information required respects the commission of an offence, etc.	Ditto	Ditto ... ...

AUTHORITY OF PUBLIC SERVANTS.

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X. *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
177	Knowingly furnishing false information to a public servant.	Shall not arrest without warrant.	Summons ...
	If the information required respects the commission of an offence, etc.	Ditto	Ditto ... ...
178	Refusing oath when duly required to take oath by a public servant.	Ditto	Ditto ... ...
179	Being legally bound to state truth, and refusing to answer questions.	Ditto	Ditto ... ...
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto	Ditto ... ...
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto	Warrant ... ...
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	Summons ...
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	Ditto ... ...
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	Ditto ... ...
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	Ditto ... ...
186	Obstructing public servant in discharge of his public functions.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER X *continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
187	Omission to assist public servant when bound by law to give such assistance.	Shall not arrest without warrant.	Summons ...
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc.	Ditto	Ditto ... ...
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto	Ditto ... ...
	If such disobedience causes danger to human life, health or safety, etc.	Ditto	Ditto ... ...
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto	Ditto ... ...
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto ... ...

CHAPTER XI.

CHAPTER XI.—FALSE EVIDENCE AND

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ... ...
	Giving or fabricating false evidence in any other case.	Ditto	Ditto ... ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto ... ...
	If innocent person be thereby convicted and executed.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

OFFENCES AGAINST PUBLIC JUSTICE.

Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Death, or as above.	Ditto.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Shall not arrest without warrant.	Warrant ... ...
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	Ditto ... ...
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto ... ...
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto ... ...
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto ... ...
200	Using as true any such declaration known to be false.	Ditto	Ditto ... ...
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto	Ditto ... ...
	If punishable with transportation for life or imprisonment for ten years.	Ditto	Ditto ... ...
	If punishable with less than 10 years' imprisonment.	Ditto	Ditto ... ...
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	Summons ...
203	Giving false information respecting an offence committed.	Ditto	Warrant ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Not bailable.	Not compoundable.	The same as for the offence	Court of Session.
According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
204	Secreting or destroying any document to prevent its production as evidence.	Shall not arrest without warrant.	Warrant ... ...
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	Ditto ... ...
206	Fraudulent removal or concealment etc. of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto ... ...
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto ... ..
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	Ditto ... ...
209	False claim in a Court of Justice.	Ditto	Ditto ... ...
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	Ditto ... ...
211	False charge of offence made with intent to injure.	Ditto	Ditto ... ...
	If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto ... ...
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto	Ditto ... ...
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ... ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class[1].
Ditto ...	Ditto ...	Ditto	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

[1] Act X of 1886, sec. 17.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
	If punishable with imprisonment for 1 year and not for 10 years.	May arrest without warrant.	Warrant ... ...
213	Taking gift etc. to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ... ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for less than 10 years.	Ditto	Ditto ... ...
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto	Ditto ... ...
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for less than 10 years.	Ditto	Ditto ... ...
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	Ditto ... ...
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ... ...
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for 1 year, and not for 10 years.	Ditto	Ditto ... ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

SCHEDULE II *continued.*

CHAPTER XI *continued.*

1 *Section.*	2 *Offence.*	3 *Whether the police may arrest without warrant or not.*	4 *Whether a warrant or a summons shall ordinarily issue in the first instance.*
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	Warrant ... ...
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto	Ditto ... ...
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	Ditto ... ...
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	Ditto ... ...
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto	Ditto ... ...
	If with imprisonment for less than 10 years.	Ditto	Ditto ... ...
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto	Ditto ... ...
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto	Ditto ... ...
	If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Ditto	Ditto ... ...
223	Escape from confinement negligently suffered by a public servant.	Ditto	Summons ...

5 *Whether bailable or not.*	6 *Whether compoundable or not.*	7 *Punishment under the Indian Penal Code.*	8 *By what Court triable.*
Bailable ...	Not compoundable.	Imprisonmnnt of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.