



Bombay Government Gazette.

Published by Authority.

THURSDAY, 14TH JANUARY 1875.

Separate paging is given to this part, in order that it may be filed as a separate compilation.

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th January 1875 :—

We, the undersigned Members of the Select Committee to which the Bill to regulate the

Procedure of the High Courts in the exercise of their original criminal jurisdiction was referred, have considered the papers noted in the margin, and we have the honour to present this further report.

2. Incompliance with the wishes of the High Courts of Judicature at Fort William and Bombay, we have reproduced in the Bill itself the provisions of the Code of Criminal Procedure to which as introduced it merely referred. We have thus, we hope, made the Bill a complete Code of that branch of the law to which it relates. The Bill as now amended is divided into sixteen chapters, relating respectively to the following subjects :—

From C. C. Macrea, Esq., Clerk of the Crown, dated 24th March 1874.
 „ Home Department, No. 453 J, dated 25th March 1874, and enclosures.
 „ Acting Registrar, High Court, Bombay, dated 31st March 1874, and enclosures.
 „ Financial Department, No. 2170, dated 31st March 1874, and enclosures.
 Minute by Mr. Justice Bayley, dated 28th March 1874.
 Ditto by Mr. Justice Marriott, dated 31st March 1874.
 Note by J. Pitt Kennedy, Esq.
 From Honorary Secretary, British Indian Association, dated 6th April 1874, and enclosures.
 Opinion by Mr. Justice Markby, dated 1st June 1874.
 From Pitt Kennedy, Esq., dated 15th June 1874.
 „ Government, Panjab, No. 2535, dated 6th July 1874, and enclosures.
 Note by Chief Justice Sir R. Couch, dated 11th July 1874.
 From Officiating Registrar, High Court, Calcutta, No. 918 A, dated 16th July 1874.
 „ Government, North-Western Provinces, No. 1113 A, dated 15th July 1874, and enclosures.
 „ Government, Madras, No. 1510, dated 15th August 1874, and enclosures.
 Endorsement, Home Department, No. 147 J, dated 21st September 1874, forwarding memorial from British Indian Association.
 From Government of Bombay, No. 7082, dated 14th Dec. 1874, and enclosures.

CHAPTER I.—Preliminary.

- „ II.—Of Sessions.
- „ III.—Of Procedure on Commitments.
- „ IV.—Of the Commencement of the Trial.
- „ V.—Of Juries.
- „ VI.—Of the Trial.

CHAPTER VII.—Of Evidence.

- „ VIII.—Of the Charge to the Jury.
- „ IX.—Of the Verdict and the Discharge of the Jury.
- „ X.—Of the Sentence.
- „ XI.—Of Previous Convictions or Acquittals.
- „ XII.—Of Criminal Lunatics.
- „ XIII.—Of Prosecutions in certain Cases.
- „ XIV.—Of Bail.
- „ XV.—Of Security for keeping the Peace.
- „ XVI.—Miscellaneous.

In Chapter I, we have defined “ Advocate General” to include a Government Advocate, and we have added definitions of ‘ Prosecutor,’ ‘ European British subject’ and ‘ Offence.” We have also declared that words referring to acts done shall include illegal omissions.

In Chapter III, we have empowered the Court to amend the charge on the application of the prosecutor.

We think that irregular commitments should not be validated when, during the enquiry, the prosecutor has objected to the jurisdiction of the committing Magistrate.

We think that the person committed should not be entitled to a copy of the depositions unless he demands it a reasonable time before the case comes on for trial.

In Chapter V, Section 36 (as to the trial of European British subjects and Natives jointly charged), we have provided that the Native shall be committed only when the committing Magistrate thinks that he ought to be tried.

We have declared (in accordance with Act X of 1872, Section 407) that in the Presidency towns no persons shall be summoned as a juror more than once in six months, unless the number cannot be made up without him. And we have provided for summoning supplemental jurors when, during the continuance of the session, it appears that a sufficient number has not been summoned. We have, we hope, made it clear that the total number of peremptory challenges on behalf of the accused shall never exceed eight, whatever may be the number of persons charged. We have required the foreman to ask from the Court information required by any juror.

We have empowered the High Court to make rules as to locking-up juries, and provided that, subject to such rules, the presiding Judge may order whether the jurors shall be kept together under the charge of an officer or allowed to return to their respective homes.

We think that the jury should decide all questions which according to law, whether written or unwritten, are questions of fact, and we have altered accordingly the clause of the Bill which corresponds with Section 257 of the Code.

In the section relating to the issue of commissions to take evidence, we have supplied a defect in the Code of Criminal Procedure, which does not provide for the case of the witness being in a Native State.

In the clause relating to the conviction of the accused on his own admission, we have provided that such conviction may be had, whether the offence admitted is the offence charged or not.

We have omitted the direction that the Court shall question the accused after the close of the case for the prosecution.

We have endeavoured to make the section of the Bill, which corresponds with the section of the Code as to sentences on escaped convicts, express what we believe to have been the intention of the Legislature.

We have expressly saved the provisions of the Prisoners’ Act, 1871.

We have authorised the Advocate General to enter up a *nolle prosequi*.

We have made several verbal amendments in the sections transferred from the Code.

In the schedule of repeals we have inserted Act XVIII of 1859 (to amend the law relating to offences declared to be punishable on conviction before a Magistrate), and we propose to repeal the whole of 9 Geo. IV, c. 74, except the preamble and Sections 1, 7, 8, 9, 25, 26 and 56.

We think that the Bill should be republished with this report.

A. HOBHOUSE.
B. H. ELLIS.
E. C. BAYLEY.
R. A. DALYELL.

THE HIGH COURTS' CRIMINAL PROCEDURE BILL, 1875.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title.
Local extent.
Commencement.
2. Repeal of enactments.
3. Interpretation-clause.

CHAPTER II.

OF SESSIONS.

4. Time of holding sittings.
5. Place of holding sittings.
Notice of sittings.

CHAPTER III.

OF PROCEDURE ON COMMITMENTS.

6. Cases tried by High Courts to be tried under this Act.
7. Consideration and amendment of charge.
Charge to be recorded.
Copy of charge.
8. Copies of depositions.
9. How Court may deal with charge.
10. Prisoner may apply for amendment.
11. Court may amend charge.
12. When trial may proceed immediately after amendment.
13. When new trial may be directed or trial suspended.
14. Prosecutor and accused person may recall witnesses.
15. Previous sanction to be obtained if offence in amended charge require it.
Joinder of Charges.
16. Separate charges for distinct offences.
17. More offences than one of same kind may be charged within a year of each other.
18. Trial of more than one offence.
One offence falling within two definitions.
Acts severally constituting more than one offence, but collectively coming within one definition.
19. Where it is doubtful what offence has been committed.
20. When a person is charged with one offence, he can be convicted of another.
21. When offence proved included in offence charged.
22. What persons may be charged jointly.
23. Effect of errors.
24. Entry on unsustainable charge.
Effect of entry.
25. When irregular commitments may be validated.
26. Custody pending direction as to place of trial.
Procedure thereafter.
27. Intermediate custody of European British subjects.

CHAPTER IV.

OF THE COMMENCEMENT OF THE TRIAL.

28. Commencement of trial.
29. Plea of guilty.
30. Refusal to plead or claim to be tried.
31. Right of accused to be defended.

CHAPTER V.

OF JURIES.

SECTION. (a) *Of Juries generally.*

32. Trials to be by jury.
33. Number of jurors.
34. Successive trials by same jury.
35. Majority of jurors for trial of European British subjects.
36. Trial of European British subject and Native jointly charged.
37. Provisions for European British subject requiring majority of Europeans in jury.
Native may claim separate trial.

(b) *Of Juries in the Presidency Towns.*

38. Trials before special jury.
39. Jurors' book.
40. Number of special jurors.
41. Exemption of special jurors.
42. Lists of common and special jurors.
43. Discretion of officer preparing lists.
44. Publication of lists.
45. Number of jurors to be summoned.
Supplementary summons.
46. Failure of jurors to attend.
47. Peremptory challenges.
Challenges on cause.
48. Trial of challenges.
49. Powers of Presidency High Court as to jurors.

(c) *Of Juries in the Mofussil.*

50. Summoning jurors.
51. Military jurors.
52. Juries for trial of European British subjects.
53. Names of jurors to be called.
Objections to jurors.
54. Grounds of objection.
55. Decision of objection.
56. Supply of place of juror against whom objection allowed.
57. Juror to understand language in which evidence is given or interpreted.

(d) *Of the Foreman.*

58. Foreman of jury.

CHAPTER VI.

OF THE TRIAL.

59. Examination of witnesses.
60. Examination of accused before Magistrate to be evidence.
61. Examination of accused.
Accused not punishable for refusal to answer.
62. Defence.
63. Prosecutor's right of reply.
64. View by jury.
65. Locking-up jury.
66. Postponement of trial.
Adjournment.
67. Jury to attend at adjourned sitting.
68. Power to prescribe mode in which evidence shall be taken down.
69. Evidence of jurors.
70. Interpreter.

CHAPTER VII.

OF EVIDENCE.

71. Evidence of medical witness.
Court may summon medical witness.
72. Report of Chemical Examiner.
Genuineness of signature may be presumed.

SECTION.

- 73. Admission of accused.
- 74. Record of evidence in absence of accused.
- 75. Evidence given at preliminary inquiry.

Commissions.

- 76. When a commission may issue.
Mode of issuing commission.
Where witness is in a Native State.
Where witness is in a Presidency Town.
Prosecutor and accused may examine witness.
Return of commission.

Tender of pardon to obtain Evidence.

- 77. Court may direct tender of pardon.
- 78. Commitment of person to whom pardon has been tendered.

Of securing the Attendance of Witnesses and the Production of Documents.

- 79. Procedure for obtaining attendance of witnesses.
- 80. Power to summon material witness or examine person present.
- 81. When warrant of arrest may issue in first instance.
- 82. Procedure when warrant cannot be served.
- 83. Release of attached property of witness appearing and satisfying Court.
Sale of property of witness not appearing or not satisfying Court.
- 84. Arrest of person disobeying summons.
- 85. Right of accused as to examination and summoning of witness.
- 86. Procedure for obtaining production of document required as evidence.
- 87. When warrant for search for documents may issue.
- 88. Power to impound document produced.
- 89. Procedure in case of refusal to answer or produce documents.

CHAPTER VIII.

OF THE CHARGE TO THE JURY.

- 90. Charge to jury.
- 91. Duty of Judge.

CHAPTER IX.

OF THE VERDICT AND THE DISCHARGE OF THE JURY.

- 92. Retirement to consider verdict.
- 93. Duty of jury.
- 94. Foreman to communicate verdict.
- 95. Verdict to be given on each charge.
Judge may question jury.
- 96. Procedure where jury differ.
- 97. Verdict when to be delivered.
- 98. Discharge of jury in default of unanimity or majority of six with Judge's concurrence.
- 99. Discharge of jury in case of sickness of juror or prisoner.
- 100. Re-trial of prisoner after discharge of jury.
- 101. Power to reserve questions.
Procedure when question reserved.
- 102. Withdrawal of remaining charges on conviction on one of several charges

CHAPTER X.

OF THE SENTENCE.

SECTION.

- 103. Form and direction of warrant of commitment.
- 104. Provisions of Criminal Procedure Code, sections 303, 304, 305 applied in mofussil.
- 105. Levy of fine.
Cases to which section applies.
- 106. Payment of fine in compensation.
- 107. Imprisonment in default of payment of fine.
- 108. Execution of sentences of whipping.
- 109. Sentence in cases of simultaneous conviction of several offences.
Maximum term of imprisonment.
- 110. Currency of sentence on escaped convicts.
- 111. Sentence on offender already sentenced for another offence.
Proviso.
- 112. Confinement of youthful offenders in reformatories.
- 113. Sentence of death.
- 114. Postponement of capital sentence on pregnant woman.
- 115. Disposal of property regarding which offence committed.
- 116. Expenses of complainants and witnesses.

CHAPTER XI.

OF PREVIOUS CONVICTIONS OR ACQUITTALS.

- 117. Person once convicted or acquitted not to be tried for same offence.
- 118. Previous conviction to be set out in charge.
- 119. Previous conviction or acquittal how proved.

CHAPTER XII.

OF CRIMINAL LUNATICS.

- 120. Procedure in case of person committed being lunatic.
- 121. Release of lunatic pending investigation or trial.
Custody of lunatic.
- 122. Resumption of trial.
- 123. Procedure on accused appearing before Court.
- 124. Finding in case of acquittal on ground of being lunatic.
- 125. Person so acquitted to be kept in safe custody.
- 126. Lunatic prisoners to be visited by Inspector-General.
- 127. Procedure where lunatic prisoner is reported capable of making his defence.
- 128. Procedure where lunatic confined under section 125, is declared capable of being discharged.
- 129. Delivery of lunatic to care of relative.
- 130. Procedure where accused does not understand the proceedings.

CHAPTER XIII.

OF PROSECUTIONS IN CERTAIN CASES.

- 131. Prosecutions for offences against the State.
- 132. Prosecution of Judges and public servants.
Sanction when to be given.
- 133. Prosecution for contempts of the lawful authority of public servants.
- 134. Prosecution for certain offences against public justice.
- 135. Prosecution for certain offences relating to documents given in evidence.

SECTION.

136. Nature of sanction necessary.
 137. Procedure in cases mentioned in sections 133, 134, and 135.
 138. Prosecution for adultery.
 139. Prosecution for enticing away a married woman.

CHAPTER XIV.

OF BAIL.

140. Power to direct admission to bail.
 141. Procedure to compel payment of penalty by accused.
 142. Procedure to compel payment of penalty by sureties.
 Remission of part of penalty.
 Court may direct Magistrate to levy sum forfeited.
 143. Deposit instead of bail.

CHAPTER XV.

OF SECURITY FOR KEEPING THE PEACE.

144. Personal recognizance to keep the peace in cases of conviction.
 145. Security to keep the peace.
 146. Power to restore possession of immoveable property.

CHAPTER XVI.

MISCELLANEOUS.

147. Saving of Acts XV. of 1869 and V. of 1871.
 148. Advocate General may exhibit informations.
 149. Effect of charge preferred by Advocate General.
 150. Power to enter *nolle prosequi*.
 151. Power of Presidency High Court to transfer to itself cases from Police Magistrates.
 152. Criminal Courts to be open.
 153. Compounding offences.
 154. Judges of High Courts to be Justices of the Peace *virtute officii*.
 155. Pending cases.

THE SCHEDULE.—Enactments repealed.

A Bill to regulate the Procedure of the High Courts in the exercise of their original criminal jurisdiction.

[AS AMENDED BY THE SELECT COMMITTEE.]

WHEREAS it is expedient to consolidate and amend the law relating to the procedure of the High Courts in the exercise of their original criminal jurisdiction; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The High Courts' Criminal Procedure Act, 1875 :"

VI.—2

Local extent.

It extends to the whole of British India ;

Commencement.

And it shall come into force on the *first day of March 1875*.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent mentioned in the third column of the said schedule, but not so as to revive any practice thereby abolished.

And all rules made under any of the said enactments shall be deemed to have been made under this Act, so far as they are consistent herewith.

3. In this Act, unless there be something repugnant in the subject or context—

"High Court" includes all High Courts established or to be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the Chief Court of the Panjáb and such other Courts as the Governor-General in Council may, from time to time, declare to be invested with the powers of a High Court under this Act :

"Chief Justice" includes also the Senior Judge of a Chief Court :

"Advocate General" includes also a Government Advocate :

"Clerk of the Crown" includes any officer specially appointed by the Chief Justice to

discharge the functions given by this Act to the Clerk of the Crown ; and

"Magistrate" includes also a Police Magistrate in the Towns of Calcutta, Madras, and Bombay.

"European British Subject." "European British Subject" means—

(a) all subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian colonies, or possessions of Her Majesty, or in the colonies of New Zealand, the Cape of Good Hope, and Natal ;

(b) the children and grandchildren of any such person by legitimate descent.

"Prosecutor" includes every person conducting a prosecution on behalf of Her Majesty.

"Offence" denotes anything made punishable by any law for the time being in force ; and

words which refer to acts done extend also to illegal omissions.

CHAPTER II.

OF SESSIONS.

4. 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.

5. The High Court shall hold its sittings at the place at which it 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, and as the Local Government in the case of the other High Courts, may direct. 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,

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

Notice of sittings. of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

CHAPTER III.

OF PROCEDURE ON COMMITMENTS.

6. All cases committed to the High Court and tried by it shall be Cases tried by High and tried by it shall be Courts to be tried under tried subject to the provisions of this Act.

7. When any person is committed for trial before a High Court, the Clerk of the Crown, or if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appear necessary or expedient so to do, alter or redraw the same, having regard to the rules as to the form of charges contained in the Code of Criminal Procedure.

The charge, with such alterations (if any), shall be recorded in the

Charge to be recorded. High Court, and a copy of such charge shall be

Copy of charge. given to the person gratis if he demands it.

8. The person charged shall also be entitled to a copy of his own examination before the committing Magistrate and to copies of the examinations of witnesses upon whose depositions he has been committed, and of all other depositions (if any) taken against him and returned into the High Court, if he demands them a reasonable time before the case comes on for trial and pays for the same a reasonable sum not exceeding one anna for each folio of ninety words.

The Court may for any special reason remit any such payment.

9. If a prisoner is committed to the Court without any charge at all, the clerk of the crown, or if there be not a clerk of the crown a judge of the High Court, may draw up a charge having regard to the rules referred to in section seven. If a prisoner is committed upon a charge which the Court, upon

reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence or offences which it considers to be proved by the evidence taken before the committing Magistrate.

10. Any accused person may apply to the Court for an amendment of the charge made against him; and in considering whether any error in a charge did in fact mislead the accused person, the Court shall take into account the fact that he did or did not make such an application.

Prisoner may apply for amendment.

11. The Court may, upon the application of the accused person, or of the prosecutor, or upon its own motion, amend or alter any charge at any stage of the proceedings before the verdict of the jury is delivered. Such amendment shall be explained to the accused person.

12. If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused person in his defence, it shall be at the discretion of the Court, after making such amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

13. If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused person in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the accused person to make his defence to the amended or altered charge; and, after hearing his defence, the Court may, if it thinks fit, further adjourn the trial, to admit of the appearance of any witness whose evidence the Court may consider to be material to the case, or whom the accused person may wish to be summoned in his defence.

When new trial may be directed or trial suspended.

14. In all cases of amendment or alteration of a charge during the trial, the prosecutor and accused person shall be allowed to recall and examine any witness who may have been examined.

Prosecutor and accused person may recall witnesses.

15. If the offence stated in the amended or altered charge be one for 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 amended or altered charge was founded.

Joinder of Charges.

16. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases hereinafter excepted.

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.

17. When a person is accused of more offences than one of the same kind, committed within a year of each other, he may be charged and tried at the same time for any number of them not exceeding three.

EXPLANATION.—Offences are said to be of the same kind under this section if they fall within the provisions of section nineteen.

18. 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 for every such offence at the same time.

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 each of the offences so committed; but he must not receive a more severe punishment than could be awarded for any of such offences.

III. If several acts, of which one or more one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence which he may have committed; but he must not receive for such offences, collectively, a punishment more severe than that which might have been awarded for any one of such offences, or for the offence formed by their combination.

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 separately charged with, convicted of, and punished for, offences under sections 225 and 333, Indian Penal Code.

(b.) A has in his possession several counterfeit seals with the intention of committing several forgeries. A may be separately charged with, convicted of, and punished for, the possession of each seal for a distinct forgery under section 473, Indian Penal Code.

(c.) A, with intent to cause injury to B, institutes proceedings against him, knowing there is no just or lawful ground for such proceedings. A also, in the course of the proceedings, falsely charges B with having committed an offence. A may be separately charged with, convicted of, and punished for, two offences under section 211, Indian Penal Code.

(d.) A, with intent to injure B, brings a false charge against him of having committed an offence. On the trial, A gives false evidence against B. A may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 or 195, Indian Penal Code.

(e.) A, knowing that B, a female minor, has been kidnapped, wrongfully confines her and detains her

as a slave. A may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370, Indian Penal Code.

(f.) A, with six others, commits the offences of rioting, grievous hurt to B, and of assaulting C, a public servant engaged in suppressing the riot. A may be separately charged with, convicted of, and punished for, offences under sections 147, 325, and 152, Indian Penal Code.

(g.) A criminally intimidates B, C, and D, at the same time. A may be separately charged with, convicted of, and punished for, each of the three offences under section 506, Indian Penal Code.

(h.) A intentionally causes the death of three persons by upsetting a boat. A may be separately charged with, convicted of, and punished for, three offences under section 302, Indian Penal Code.

To paragraph II.

(i.) A commits mischief by cutting down a tree in a Government forest. The tree overhangs the bank of a river and falls into the stream. A commits theft by having severed the tree and by floating it down the river to his village, where he sells it. A may be separately charged with, and convicted of, offences under sections 426 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 379 only.

(j.) 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; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 323 only.

(k.) A wrongfully kills a buffalo worth sixty rupees belonging to B, and then takes away the carcass in a manner amounting to theft. A may be separately charged with, and convicted of, offences under sections 429 and 379, Indian Penal Code; but the Court which tries him may not inflict a more severe sentence than if it had convicted him under section 429 only.

(l.) Several stolen sacks of corn are made over to A and B, who know they are stolen property. A and B thereupon 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, Indian Penal Code; but the Court which tries them may not inflict a severer sentence than if it had convicted them under one of those sections only.

(m.) A uses a forged document in evidence, in order to convict B, a public servant, of an offence under section 167. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under one of those sections only.

To paragraph III.

(n.) 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 Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

(o.) A robs 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; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 392 or 394 only.

(p.) A entices B, the wife of C, away, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497, Indian Penal Code; but the Court which tries him may not inflict a severer sentence than if it had convicted him under section 497 only.

19. If a single act or series of acts is of such nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person 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.

Illustrations.

A is accused of an act which may amount to either theft, receiving stolen property, criminal breach of trust, or cheating. He may be charged separately with theft, criminal breach of trust, and cheating, or he may be charged with having committed either theft, or criminal breach of trust, or cheating.

20. If, in the case mentioned in section nineteen one charge only is brought against an accused person, 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.

Illustration.

A is charged with theft. It appears that he committed criminal breach of trust, or receiving stolen goods. He may be convicted of criminal breach of trust, or receiving stolen goods, though he was not charged with it.

21. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

Illustrations.

(a.) A is charged under section 407, 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 with murder. He may be convicted of culpable homicide, or causing death by negligence.

22. 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 proper, and the provisions hereinbefore contained 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.

23. No error, either in the way in which the offence is stated, or in the particulars required by the Code of Criminal Procedure to be stated, and no omission to state the offence, or to state those particulars, shall be regarded at any stage of the case as material, unless the person accused was in fact misled by such error or omission.

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. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. 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, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. 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.

24. When any charge, or portion of a charge, recorded as aforesaid appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, he may make on the charge an entry to that effect.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge (as the case may be), but shall not operate as an acquittal of the person charged.

25. If any Magistrate, not being empowered by law, commits an accused person to take his trial before a High Court, the Court may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless objection was made on behalf either of the accused person or of the prosecution to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

26. Pending the directions of the Court as to the place of trial every person committed for trial shall (if not admitted to bail) be committed by the Magistrate for intermediate custody to the criminal jail in which he can be most conveniently confined.

If the trial be directed to be held at the ordinary place of sitting of the Court, the Magistrate shall bind over the person charged to appear and take his trial at such place of sitting, or shall commit him to the jail at such place.

If the Court direct that the person charged be tried elsewhere than at its ordinary place of sitting, the Magistrate shall bind him over to appear and take his trial at the place so directed, or shall, if necessary, cause him to be removed to the criminal jail at or nearest to the place at which he is directed to be tried.

27. The Court may direct that all European British subjects committed or bailed 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,

or direct that they shall be tried at a particular place named, and may also order that they shall if not bailed, be committed for intermediate custody to a particular jail, being one of the jails appointed by the Government for the reception of such prisoners.

CHAPTER IV.

OF THE COMMENCEMENT OF THE TRIAL.

28. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read

and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

29. If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

30. If the accused person refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors as hereinafter directed, and to try the case.

31. Every person accused of an offence may of right be defended by any advocate of a High Court.

Any such person may, with the permission of the Court (but not otherwise), employ any person not being an advocate, attorney or pleader, to assist him in his defence.

CHAPTER V.

OF JURIES.

(a) *Of Juries generally.*

32. All trials under this Act shall be by jury;

and, notwithstanding anything contained in section sixty-four of the Code of Criminal Procedure, in all criminal cases transferred to a High Court under that section or 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 direct, be by jury.

33. The jury shall consist of nine persons, who shall be chosen by lot from the persons summoned to act as jurors.

34. Subject to the right of challenge herein Successive trials by after mentioned, the same same jury. jury may try as many accused persons successively as the Court thinks fit.

35. If before the first juror is called and accepted, any European British subject charged as aforesaid requires to be tried by a mixed jury, the majority of the jurors shall consist of Europeans or Americans, or both Europeans and Americans.

36. In any case in which a European British subject is accused jointly with a person not being a European British subject, and such European British subject is committed for trial before a High Court, the person so jointly accused shall (if the committing Magistrate thinks that he ought to be tried), also be committed for trial before such High Court, notwithstanding any provision to the contrary in the Code of Criminal Procedure.

Such persons 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.

37. Provided that if before the jury is empannelled the European British subject requires the majority of the jurors to consist of Europeans or Americans, or both Europeans and Americans, and the person not being a European British subject requires that he shall be tried separately by a jury of which at least one-half shall consist of persons not being Europeans or Americans, the latter person shall be tried separately.

Native may claim separate trial.

(b) *Cf Juries in the Presidency Towns.*

38. Every person tried in Calcutta, Madras, or Bombay, shall be tried before a special jury.

(a) if charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs.

39. The jurors' book for the year current when this Act comes into force, shall be taken as containing a correct list of persons qualified and liable to serve as jurors under this Act; and those persons whose names are entered in the said book as being privileged to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this Act during the year for which the said list has been prepared.

40. The names of not more than two hundred persons shall at any one time be entered in the Special Jurors' list.

41. All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

42. 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, prepare

(a) a list of all persons qualified and liable to serve as common jurors;

(b) a list of persons qualified and 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 may exempt any salaried officer of Government from serving as a juror.

43. 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.

44. Preparatory lists of persons qualified or liable to serve as common jurors and as special jurors, respectively, signed by the officer by whom the same have been prepared, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons qualified or 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.

45. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are qualified and liable to serve on special juries, and fifty-four of those who are qualified and 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.

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 qualified and liable to serve as aforesaid shall be summoned for such sessions.

46. Any person so summoned who without lawful excuse fails to attend is 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.

47. Challenges without cause shown shall be Peremptory challenges, allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

The following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person or persons charged :—

(a) Some personal objection, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force :

(b) Some presumed or actual partiality in the juror :

(c) A previous conviction of the juror of a non-bailable offence under the Indian Penal Code, or of a similar offence under any other law in force in British India :

(d) Inability to understand English when spoken.

48. The Judge before whom a person charged with Trial of challenges. is about to be tried shall try any challenge, other than a challenge without cause shown; and if the Judge allow the challenge, the juror shall be set aside.

The decision of the Judge as to any challenge shall be final.

49. Save as herein provided, the High Courts of Judicature at Fort William, Madras, and Bombay shall retain all their present powers respecting the summoning, empannelling, qualification, challenging, and service of jurors,

and shall have power to make such rules on these subjects (consistent with the provisions of this Act) as seem to it to be proper.

All rules relating to jurors now in force in the same High Courts shall (so far as they are consistent with this Act) remain in force until repealed or altered by new rules made under this section.

(c) *Of Juries in the Mofussil.*

50. Whenever a High Court has given notice of its intention to hold sittings at any place (other than the towns of Calcutta, Madras and Bombay) 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, take and cause to be taken the measures prescribed by sections 407, 409, 410, and 411 of the Code of Criminal Procedure for the summoning of jurors.

51. In addition to the persons so summoned as Military jurors. jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-Commissioned Officers in the military service, 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 European British subjects charged with offences before the High Court as aforesaid.

All Commissioned and Non-Commissioned Officers so summoned shall be liable to serve on such juries notwithstanding anything contained on the Code of Criminal Procedure; but no Commissioned or Non-Commissioned 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.

52. The juries for the trial of European British subjects as aforesaid shall be formed in the manner required by the Code of Criminal Procedure and by this Act from the persons summoned in accordance with sections 50 and 51.

53. As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be made to such juror by the accused person, or by the prosecutor, and the grounds of objection shall be stated.

54. Any objection made to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(a) his holding any office in or under the Court or the local Court of Session:

(b) his executing any duties of Police or being entrusted with any police functions;

(c) his having been convicted of any offence against the State, or of any fraudulent or other offence which, in the judgment of the Court, renders him unfit to serve on the jury;

(d) his having by habit or religious vows relinquished all care of worldly affairs;

(e) his standing in the relation of husband, master, servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person accused;

(f) his being in the employment of any of such persons;

(g) his being plaintiff or defendant in any civil suit against any of such persons;

(h) his having complained against, or having been accused by, any of such persons in any criminal prosecution.

(i) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, any of such persons, or which renders such person improper as a juror.

55. Any objection made to a juror shall be decided by the Court, and such decision shall be final.

56. If the objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be 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 no objection to such other juror or person be made and allowed under section 54.

57. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

Juror to understand language in which evidence is given or interpreted.

(d) *Of the Foreman.*

58. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of jury, and to ask any information from the Court that may be required by the jury or any of the jurors.

If a majority of the jury do not agree in the appointment of a foreman, he shall be appointed by the Court.

CHAPTER VI.

OF THE TRIAL.

59. The prosecutor shall then open his case, and the witnesses shall be examined, cross-examined, and re-examined according to the law for the time being relating to the examination of witnesses.

60. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

61. The Court may from time to time, at any stage of the trial, examine the accused person.

The accused person shall not be liable to any punishment for refusing to answer, or for answering falsely, questions asked under this section, but the Court shall draw such inference as seems just from such refusal or false answer.

No oath or affirmation shall be administered to the accused persons.

62. When the examination of the witnesses for the prosecution and the examination of the accused person are concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding, direct the jury to return a verdict of acquittal.

If the Court considers that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

63. If any evidence is adduced on behalf of the accused person, the prosecutor shall be entitled to reply.

64. Whenever, in the opinion of the Court, it is proper and convenient that the jury should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the enquiry in the trial took place, an order shall be made to that effect, and the jury 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 suffer any other person to speak to, or hold any communication with, any of the jury.

65. The High Court may from time to time make rules as to keeping the jury together during a trial 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.

66. The Court may, in its discretion, postpone the hearing of the case; and may, from time to time, adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

67. If a trial is adjourned, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

68. The Court may, if it think fit, from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

69. If a juryman is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined, cross-examined, and re-examined, in the same manner as any other witness.

70. When the services of an interpreter are required by the Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

CHAPTER VII.

OF EVIDENCE.

71. The examination of a Civil Surgeon or other medical witness, taken and duly attested by a Magistrate, may be given in evidence in any criminal trial, although the person examined is not called as a witness.

The Court may summon such Civil Surgeon or other medical witness, if it sees sufficient cause for doing so.

72. Any document purporting to be a report from the 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 criminal trial, or in any preliminary inquiry relating thereto, may, if it bears his signature, be used as evidence in any criminal trial.

The Court may presume that the signature of any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

73. If, after the commencement of the trial the accused person admits before the Court the commission of an offence, the Court may convict him on his own admission, whether such offence is the same as the offence of which he is accused or not.

74. If an accused person abscond, and after due pursuit cannot be arrested, the Court may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution and record their depositions; and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged if it is not practicable to procure the attendance of the deponent.

75. When a witness is produced, the evidence (if any) given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.

Evidence given at preliminary inquiry.
EXPLANATION.—This section shall not authorise the Court to refer to the record of the evidence given by a witness who is absent, except in the cases in which such evidence may be referred to under the Indian Evidence Act, 1872, or other law in force for the time being upon the subject of evidence.

Commissions.

76. Whenever it appears that the attendance of a witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case would be unreasonable, the Court may dispense with his personal attendance.

When a commission may issue.
The Court may direct a Commission to the Magistrate of the District, or to a Magistrate of the first class, in whose jurisdiction such witness may be. The Magistrate to whom the commission is directed shall proceed to the place where such witness is, or shall summon such witness before himself. Such Magistrate shall take the evidence of such witness in the same manner, and shall have for this purpose, and may exercise, the same powers as in trials of warrant cases.

Mode of issuing commission.
When the witness is in the territories of any Native Prince or State in India in alliance with Her Majesty, the commission may be directed to any Justice of the Peace or other officer in the service of the Crown resident in such territories; and the provisions of the second clause of this section shall apply to such Justice of the Peace or officer.

Where witness is in a Native State.
If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras, and Bombay, the commission may be directed to any Police Magistrate within such limits, and such Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him.

The prosecutor and the accused person may forward interrogatories, upon which the officer to whom the commission is directed shall examine the witness, or the prosecutor may appear personally before the officer to whom the commission is directed, or the prosecutor or accused person may so appear by authorized agent.

After any commission issued under this section 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 of such witness may be used as evidence in the case and shall form part of the record.

Tender of Pardon to obtain Evidence.

77. The Court may, with the view of obtaining on the trial the evidence of any person or persons supposed to have been directly or indirectly concerned in, or privy to, any offence mentioned in column 7 of the fourth schedule annexed to the Code of Criminal Procedure as triable exclusively by the Court of Session, instruct the committing Magistrate to tender, or itself may, at any time before judgment, tender, a pardon to such person or persons, on condition of his or their making a full, true, and fair disclosure of the whole of the circumstances, within his or their knowledge, relative to the crime committed and every other person concerned in the perpetration thereof.

Any person accepting a tender of pardon under this section shall be examined as a witness in the case, under the rules applicable to the examination of witnesses.

Such person, if not on bail, shall be detained in custody pending the termination of the trial.

78. When a pardon has been tendered under section 77, if it appears to the Court that any person who has accepted such tender has not conformed to the conditions under which it was made, either by wilfully concealing anything essential, or by giving false evidence, the Court may commit, or direct the commitment of, such person, for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he may appear to have been guilty in connection with the same matter.

The statement made by a person under pardon, which pardon has been withdrawn under this section, may be put in evidence against him.

Of the securing Attendance of Witnesses and the Production of Documents.

79. The following procedure shall be pursued in order to obtain the attendance of witnesses before the Court.

Procedure for obtaining attendance of witnesses.

80. The Court may, at any stage of any proceeding, inquiry or trial, summon any witness, or examine any person in attendance though not summoned as a witness, and it shall be its duty to do so if the evidence of such person appears essential to the just decision of the case.

When warrant of arrest may issue in first instance. 81. If the Court has reason to believe that any witness whose attendance is required will not attend to give evidence without being compelled to do so, it may, instead of issuing a summons, issue a warrant of arrest in the first instance.

Procedure when warrant cannot be served. 82. If such warrant cannot be executed, and the Court considers that the witness is absconding or concealing himself for the purpose of avoiding the service thereof, it may issue a proclamation, requiring his attendance to give evidence at a time and place to be named therein, to be affixed on some conspicuous part of his ordinary place of abode.

If the witness does not attend at the time and place named in such proclamation the Court may order the attachment of any moveable property belonging to such witness, to such amount as seems reasonable, not being in excess of the amount of costs of attachment and of any fine to which he may be liable under the provisions of the next following section.

Such order shall authorize the attachment of any such moveable property within the jurisdiction of the Court by which the order was made; and if any such moveable property be without the jurisdiction of the said Court, such order when endorsed by the Magistrate of the District in which such property is situated shall authorize the attachment of the property last aforesaid.

Release of attached property of witness appearing and satisfying Court. 83. If the witness appears and satisfies the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property attached be released from attachment, and shall make such order in regard to the costs of the attachment as the Court thinks fit.

Sale of property of witness not appearing or not satisfying Court. If such witness does not appear, or, appearing, fails to satisfy the Court that he did not abscond or conceal himself for the purpose of avoiding the execution of the warrant, and that he had not notice of the proclamation as aforesaid, the Court may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which may be imposed upon such witness under the provisions of section 172 of the Indian Penal Code.

If the witness pays to such Court the costs and fine as aforesaid, his property shall be released from attachment.

Arrest of person disobeying summons. 84. If any person summoned to give evidence neglects or refuses to appear at the time and place appointed by the summons, and no reasonable excuse is offered for such neglect or refusal, the Court, upon proof of the summons having been duly served, may issue a warrant under its seal to bring such person before it to testify as aforesaid.

Right of accused as to examination and summoning of witness. 85. The accused person shall be allowed to examine any witness not previously named by him, if such witness be in attendance; but he shall not, except as provided in section thirteen, be entitled of right to have any witness summoned other than the witnesses summoned by the Magistrate by whom he was committed or held to bail for trial.

Procedure for obtaining production of document required as evidence. 86. Whenever the Court considers that the production of any document is necessary or desirable for the purposes of any investigation or judicial proceeding, the Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce such document at the time and place stated in the summons.

When warrant for search for documents may issue. 87. If there is reason to believe that the person to whom the summons is addressed will not produce the document as directed in the summons, the Court may issue a search-warrant for the document in the first instance.

Power to impound document produced. 88. The Court may, if it thinks fit, impound any document produced before it, or may, at the conclusion of the proceedings, order such document to be returned to the person who produced it.

Procedure in case of refusal to answer or produce documents. 89. If a witness refuses to answer any question which is put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any just excuse for such refusal, he shall be deemed guilty of contempt of Court.

CHAPTER VIII.

OF THE CHARGE TO THE JURY.

Charge to jury. 90. 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, and laying down the law by which the jury are to be guided.

Duty of Judge. 91. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence, or the propriety of questions asked by parties or their agents, which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmis-

sible evidence, whether it is or is not objected to by the parties ;

to decide upon the meaning and construction of all documents given in evidence at the trial ;

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 ;

to decide whether any question which arises is for himself or for the jury ; and upon this point his decision shall be final.

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.

Illustrations.

(a.) It is proposed to prove a statement made by a person not called as a witness, under circumstances which render evidence of his statement admissible.

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.

CHAPTER IX.

OF THE VERDICT AND THE DISCHARGE OF THE JURY.

92. After the Judge has finished his charge, Retirement to con- sider the jury may retire to consider their verdict.

It shall be the duty of an officer of the Court not to suffer any person other than a juror to speak to, or hold any communication with, any member of such jury.

Duty of jury. 93. 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 and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not ;

(c) to decide all questions which according to law are to be deemed questions of fact ;

(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.

(1.) 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 be acquitted.

It is the duty of 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.

(2) 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.

94. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Foreman to communicate verdict.

95. The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.
Judge may question jury.

96. 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.

97. A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion or when as many as six are of one opinion and the Judge agrees with them.

Verdict when to be delivered.

98. When 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 default of unanimity or majority of six with Judge's concurrence.

If the Judge disagrees with the majority, he shall then 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.

99. The Judge may also discharge the jury whenever by reason of illness a juror becomes incapable of attending through the trial or the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of sickness of juror or prisoner.

100. Whenever the jury is discharged, the prisoner 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 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.

Re-trial of prisoner after discharge of jury.

101. When any person has in a trial before a Judge of the High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve questions.

Power to reserve questions.

for the decision of a Court, consisting of two or more Judges of the High 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.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge think fit, be admitted to bail, and the High Court shall have power to review the case, 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 and sentence as to the High Court seem fit.

102. When more charges than one are preferred against the same person, and when a conviction has been had on one of more of them, the prosecutor may, with the consent of the Court, withdraw, or the Court of its own accord may direct the withdrawal of the remaining charge or charges.

CHAPTER X.

OF THE SENTENCE.

103. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge who issues it.

104. In the case of a High Court holding its sitting elsewhere than in the towns of Calcutta, Madras, or Bombay, the provisions of the Code of Criminal Procedure, section 303, 304, and 305 shall apply to the officers therein mentioned.

105. Whenever an offender is sentenced to pay a fine, the Court may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court, when endorsed by the Magistrate of the District in which such property is situated.

This section shall not apply to cases in which any special procedure is laid down, by any special or local law in force for the time being for the recovery of any fine, but shall apply to cases in which no such procedure is laid down, and to all fines not levied when this Act comes

into force, but which might have been levied under this section if it had been in force when they were imposed.

106. Whenever the Court imposes a fine under any law in force for the time being, or confirms in appeal or on revision a sentence of such fine, or a sentence of which such fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation,

(a) for expenses properly incurred in the prosecution;

(b) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

107. In every case punishable under any law in force for the time being with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the High Court shall be guided by the provisions of sections 64 and 65 of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine.

108. Sentences of whipping shall be executed in manner provided by the Code of Criminal Procedure, sections 311, 312, and 313.

109. When a person is convicted, at one trial, of two or more offences punishable under the same or different sections of any law for the time being in force, the Court may sentence him, for the offence of which he has been convicted, to the several penalties prescribed by such enactment or enactments, which such Court is competent to inflict; such penalties, when consisting of imprisonment or transportation, to commence the one after the expiration of the other:

Provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

110. When sentence of death or whipping is passed on an escaped convict the Court shall direct the new sentence to take effect without waiting for the expiration of the sentence from which he has escaped.

When any other sentence is passed on an escaped convict severer than the sentence from which he has escaped, the Court shall also direct the new sentence to take effect without waiting for the expiration of the sentence from which he escaped.

When the new sentence is not severer than the sentence from which he has escaped, the Court shall direct the new sentence to take effect after such convict has suffered imprisonment or trans-

portation, 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.

When the former sentence on the escaped convict is or includes transportation for life and the Court does not sentence him to death, the new sentence shall direct that he be, as soon as practicable, sent back to the place from which he escaped.

EXPLANATION.—For the purpose of this section—

(a) a sentence of transportation 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 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.

111. When sentence is passed on a person

Sentence on offender actually undergoing sentence already sentenced for another offence. imprisonment or transportation, and the sentence is for imprisonment or transportation, the Court shall direct such imprisonment or transportation to commence at the expiration of the imprisonment or transportation to which he has been previously sentenced ;

or, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be for transportation, the Court may direct the sentence to commence immediately, or at the expiration of the imprisonment to which such person has been previously sentenced.

Provided that nothing in this section shall be held to excuse such person from any part of the punishment to which he is liable upon such former or subsequent conviction.

112. When any person under the age of sixteen years is sentenced to imprisonment for any offence, the Court may direct that such offender, instead of being imprisoned in the criminal jail, shall be confined in any reformatory 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 Government prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

113. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

114. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence.

Postponement of capital sentence on pregnant woman.

115. When the trial is concluded, the Court may make such order as it thinks fit for the disposal of any property produced before it, regarding which any offence appears to have been committed.

Any order under this section may be in the form of a reference to a Magistrate, who shall in such case deal with the property as if it had been seized by the Police and the seizure duly reported to him.

EXPLANATION.—In this section the term ‘property’ includes 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 been converted or exchanged, and anything acquired by such conversion, or exchange, whether immediately or otherwise.

116. Subject to any rules that may be passed by the Local Government

Expenses of complainants and witnesses with the previous sanction of the Governor General in Council, the Court may order payment, on the part of Government, of the reasonable expenses of any complainant of witness attending for the purpose of any trial before such Court under this Act.

CHAPTER XI.

OF PREVIOUS CONVICTIONS OR ACQUITTALS.

117. A person who has once been tried 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 19, or for which he might have been convicted under section 20.

Person once convicted or acquitted not to be tried for same offence.

A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under section 18, paragraph I.

A person convicted or acquitted of any offence in respect of any act causing consequences which, together with such act, constituted a different offence from that for which such person was acquitted or 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 acquitted or convicted.

A person convicted or acquitted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if

A person convicted or acquitted of any offence in respect of any facts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence which he may have committed in respect of the same facts, if

the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with the same theft as a servant, or, upon the same facts, with theft simple 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 an assault and convicted. The person afterwards dies. A may be tried again for culpable homicide.

(d.) A is tried under section 270 of the Indian Penal Code for malignantly doing an act likely to spread the infection of a disease dangerous to life and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. A may be charged, under section 325, with voluntarily causing grievous hurt to that person.

(e.) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried for the murder of B on the same facts.

(f.) 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.

(g.) 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 acts.

(h.) 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.

118. If the accused person has been previously convicted of any offence, and to be set out in charge. if it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If it is omitted, it may be added at any time before sentence is passed, but not afterwards.

119. A previous conviction or acquittal may be proved against an accused person 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 finding and sentence.

CHAPTER XII.

OF CRIMINAL LUNATICS.

120. If any person committed for trial appears at his trial to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact, shall give a special judgment that the accused person is of unsound mind and

incapable of making his defence; and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court.

121. Whenever an accused person is found to be of unsound mind and depending investigation capable of making his defence, the Court, if the offence of which he is accused be bailable, 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.

If the offence be not bailable, or if the required bail be not given, the Court shall report the case to the Local Government, and the accused person shall be kept in safe custody in such place as the Local Government directs.

122. Whenever a trial is postponed under section 120, the Court may at any time resume the trial, and require the accused person, if detained in custody, to be brought before the Court; or, if he has been released on security, may require his appearance.

The surety of such person shall be bound, at any time, to produce him to any officer whom the Court appoints to inspect him; and the certificate of such officer shall have the same effect as the certificate of an Inspector General of Prisons or the Visitors of Lunatic Asylums, granted under section 125.

123. If, when the accused person appears or is again brought before the Court, it appears to such Court that he is in a fit state of mind to make his defence, the inquiry shall proceed, or he shall be put on his trial as the case may require.

If it appears that the accused person is still of unsound mind, and incapable of making his defence, the Court shall again act according to the provisions of section 121.

124. Whenever any person is acquitted upon the ground that, at the time of his trial, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged or that he was doing what was wrong or contrary to law, the finding shall state specially whether such person committed the act or not.

125. Whenever such finding states that the person so acquitted accused person committed to be kept in safe custody. the act charged, the Court, before which the trial was held, shall if the act charged would, but for the incapacity found, have amounted to an offence, order him to be kept in safe custody, in such place and manner as the Court thinks fit, and shall report the case for the order of the Local Government.

The Local Government may order such person to be kept in safe custody in a Lunatic Asylum or other suitable place of safe custody.

126. When any person is confined under the Lunatic prisoners to provisions of section 121 or be visited by Inspector General. 125, the Inspector General of Prisons, if such person is confined in a jail, or the Visitors of the Lunatic Asylums 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.

127. If such person is confined under section 122 and such Inspector General or Visitors as aforesaid shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Court, at such time as it appoints, and the Court shall deal with him under the provisions of section 123; and the certificate of such Inspector General or Visitors as aforesaid shall be receivable as evidence.

128. If such person is confined under the provisions of section 125, and such Inspector General or Visitors as aforesaid 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 either 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 may appoint a commission, consisting of a judicial officer not below the grade of a Sessions Judge and two medical officers, whereof the chief medical officer attached to the Lunatic Asylum shall be one.

The said 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, who may order his discharge or detention as to it may seem fit.

129. Whenever any relative or friend of any person detained under the provisions of section 125 is desirous 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 detained shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order that the person detained be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be subject to be inspected by such officer, and at such times as the Local Government directs.

The provisions of sections 126 and 128 shall apply to persons detained under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate of the Inspector General of Prisons or the Visitors of Lunatic Asylums, under the said sections.

130. If an accused person, though not insane, Procedure where accused does not understand the proceedings, the Court may proceed with the trial; and if such trial results in a conviction, the Court shall pass thereon such order as it thinks fit.

CHAPTER XIII.

OF PROSECUTIONS IN CERTAIN CASES.

131. A complaint of an offence punishable under Chapter VI. of the Indian Penal Code, except section 127, or punishable under section 294 A of the said Code, shall not be entertained, unless the prosecution be instituted by order of, or under authority from, the Governor General in Council or the Local Government, or some officer empowered by the Governor General in Council to order or authorize such prosecution, or unless instituted by the Advocate General.

132. A complaint of an offence of which any Judge or any public servant not removable from his office without the sanction of the Government is accused as such Judge or public servant, shall not be entertained against him, except with the sanction or under the direction of the Government, or of some officer empowered by the Government, or of some Court or other authority to which he is subordinate, and whose power so to sanction or direct such prosecution the Government does not think fit to limit or reserve.

No such Judge or public servant shall be prosecuted for any act purporting to be done by him in the discharge of his duty, unless with the sanction of the Government.

The sanction must be given before the commencement of the proceedings.

In this section the expression 'Government' means either the Local Government or the Governor General in Council; and the expressions 'Judge' and 'public servant' have the meanings assigned to them respectively by the Indian Penal Code.

133. A complaint of any offence described in Chapter X. of the Indian Penal Code, not falling within section 435 or 436 of the Code of Criminal Procedure, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the public servant concerned, or of his official superior.

The prohibition contained in this section shall not apply to the offences described in sections 189 and 190 of the Indian Penal Code.

134. A complaint of an offence against public justice, described in sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the Indian Penal Code, when such offence is committed before or against a High Court, shall not be entertained in any Criminal Court, except with the sanction of the Court before or against which the offence was committed.

135. A complaint of an offence relating to

Prosecution for certain offences relating to documents given in evidence.

documents, described in sections 463, 471, 475 or 476 of the Indian Penal Code, when the document has been

given in evidence in any proceedings in any High Court, shall not be entertained against a party to such proceedings, except with the sanction of the Court in which the document was given in evidence.

136. The sanction referred to in sections 133.

Nature of sanction 134 and 135 may be expressed in general terms, and need not name the accused person.

Such sanction may be given at any time, and a sanction under any one of the three last preceding sections shall be deemed sufficient authority for the Court to amend the charge to one of an offence coming within either of the two remaining sections, if the facts disclose such offence.

EXPLANATION.—In cases under this chapter, the report or application of the public servant or Court shall be deemed sufficient complaint.

137. When the Court is of opinion that there is

Procedure in cases mentioned in sections 133, 134 and 135.

sufficient ground for inquiring into any charge mentioned in sections 133, 134 and

135, such Court, after making such preliminary inquiry as may be necessary, may either commit the case itself, or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged.

Such Magistrate shall thereupon proceed according to law; and the Court may send the accused person in custody, or take sufficient bail for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial or inquiry.

The Magistrate receiving the case may, if he is authorised to make transfers of cases, transfer the inquiry to some other competent Magistrate, instead of completing the inquiry himself.

138. A complaint of an offence under section

Prosecution for adultery.

497 of the Indian Penal Code shall not be instituted,

except by the husband of the woman, or by any person under whose care she was living at the time when the adultery was committed.

139. A complaint of an offence under section

Prosecution for enticing away a married woman.

498 of the Indian Penal Code shall not be instituted, except by the husband of the woman, or by the person

having care of such woman on behalf of her husband.

CHAPTER XIV. OF BAIL.

140. The Court may in any case direct that an

Power to direct admission to bail.

accused person shall be admitted to bail, or that the bail required by a Magistrate be reduced.

141. Whenever, by reason of default of ap-

Procedure to compel payment of penalty by accused.

pearance of the person executing the personal recognizance, the Court is of opi-

nion that proceedings should be had to compel payment of the penalty, mentioned in the recognizance, it shall proceed to enforce the penalty, by issuing a warrant for the attachment and sale of the moveable property belonging to such person, which may be found within the local limits of its ordinary original jurisdiction.

Such warrant may be executed within such limits, and it shall authorize the distress and sale of any moveable property belonging to the accused person, without such limits, when endorsed by the Magistrate of the District in which such property is situate.

142. Whenever, by reason of default of ap-

Procedure to compel payment of penalty by sureties.

pearance by the person bailed, the Court is of opinion that proceedings should be

had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, it shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid.

If such penalty be not paid, and if no sufficient cause for its non-payment be shown, the Court shall proceed to recover the penalty from such surety or sureties, by issuing a warrant for the attachment and sale of any moveable property belonging to him or them which may be found within the local limits of the ordinary original jurisdiction.

Such warrant may be executed within such local limits; and it shall authorize the distress and sale of any moveable property belonging to the surety or sureties without such limits, when endorsed by the Magistrate of the District in which such property is situate.

If such penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Court, in the civil jail, during a period not exceeding six months.

Provided that the Court may, at its discretion, remit any portion of the penalty mentioned in the recognizance of the party or witness, or of the surety or sureties, and enforce payment in part only:

The Court may direct any Magistrate to levy the amount due on a forfeited bail-bond executed in respect of attendance before such Court.

143. When any person is required to give bail the Court may permit him to deposit a sum of money or Government promissory notes to such amount as it may fix in lieu of such bail.

CHAPTER XV.

OF SECURITY FOR KEEPING THE PEACE.

144. Whenever a person accused of rioting,

Personal recognizance to keep the peace in cases of conviction.

assault, or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence,

and the Court is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace,

the Court may, in addition to any other order passed in the case, direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to his condition in life and circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding three years, with a provision that, if the same be not given, he shall be kept in simple imprisonment for any time not exceeding three years, unless within such period he executes such formal engagement as aforesaid.

If the accused person be sentenced to imprisonment, the period for which he may be required to execute a recognizance, and the imprisonment in default of executing such recognizance, shall commence when he is released on the expiration of his sentence.

145. Whenever it appears necessary to require security for keeping the peace, in addition to the personal recognizance of the party so convicted, the Court empowered to require a personal recognizance may require securities in addition thereto, and may fix the amount of the security-bond to be executed by the surety or sureties; with a provision that, if the same be not given, the party required to find the security shall be kept in simple imprisonment for any time not exceeding three years.

146. Whenever a person is convicted of an offence attended with criminal force, and it appears to the Court that, by such criminal force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to possession.

No such order shall prejudice any right over such immoveable property which any person may be able to show in a civil suit.

CHAPTER XVI.

MISCELLANEOUS.

147. Nothing herein contained shall be deemed Saving of Acts XV. of 1869 and V. of 1871. to affect the Prisoners' Testimony Act, 1869, or the Prisoners Act, 1871.

148. The Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the local High Court, against persons subject to the jurisdiction of the said Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the Court of Queen's Bench of Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken, in case of similar informations filed by Her Majesty's Attorney-General in England, so far as the circumstances of the case and the course and practice of proceeding in the said High Courts respectively will admit.

All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue

of any such information shall belong to the Government of India.

149. Upon charges preferred by the Advocate-General or by any Magistrate or other officer specially empowered by the Government in this behalf, persons committed to custody or held to bail shall be deemed to have been brought before the High Court in due course of law, and (subject to the provisions herein contained as to the amendment and alteration of charges, and subject also to the provisions of section 24) shall be tried upon the charges so recorded.

150. At any stage of any proceeding under this Act, before the return of the verdict, the Advocate-General may, if he think fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the information or charge; and thereupon all proceedings and such information or 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.

151. Whenever it appears to the High Court of Judicature at Fort William, Madras or Bombay that the direction herein-after mentioned will promote the ends of justice, it may direct the transfer to itself of any particular case from any criminal court situate within the local limits of its ordinary original criminal jurisdiction, and the High Court shall have power to determine the case so transferred, and to quash or affirm any conviction or other proceeding which may have been had therein, but so that the same be not quashed for want of form, but on the merits only.

152. Every High Court in the exercise of its original Criminal Jurisdiction shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

But the presiding Judge may, if he thinks fit, order that, during the trial of any particular case, no person shall have access to, or be, or remain in the room or building used by the Court, without the consent or permission of the Court.

153. In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

154. Every Judge of a High Court shall, by virtue of his office, be a Justice of the Peace within and for the whole of British India.

155. Cases pending, when this Act comes into force, in any High Court in the exercise of its original criminal jurisdiction, shall be decided, as far as may be, according to the procedure provided in this Act.

SCHEDULE.

(See Section 2.)

ACTS.

No. and year.	Subject or Title.	Extent of Repeal.
XXXI. of 1838.	Supreme Courts, Criminal Law.	So much as has not been repealed.
XXII. of 1839.	An Act for enabling persons charged with offences to make their defence more effectually.	So much as has not been repealed.
IV. of 1849.	Criminal lunatics.	So much as has not been repealed.
XVI. of 1852.	An Act for further improving the administration of Criminal Justice in Her Majesty's Courts of Justice in the territories of the East India Company.	So much as has not been repealed.
XVIII. of 1859.	An Act to amend the law relating to offences declared to be punishable on conviction before a Magistrate.	So much as has not been repealed.
XVIII. of 1862.	An Act to repeal Act XVI. of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature.	Sections 1 to 46 (both inclusive) and Sections 54 to 57 (both inclusive).
XIII. of 1865.	An Act to amend the procedure of Her Majesty's High Courts of Judicature in the exercise of their original jurisdiction, and to provide for the exercise of such jurisdiction at places other than the Presidency Towns.	So much as has not been repealed.
IV. of 1866.	An Act to amend the constitution of the Chief Court of Judicature in the Panjáb and its Dependencies.	Sections 21 to 41 (both inclusive) and section 20, except the first twenty-two words.
XVI. of 1866.	An Act to relieve the Governor General of India in Council from the duty of signing the commissions mentioned in Sections 22 and 44 of the High Courts Criminal Procedure Amendment Act, 1865.	The whole.

THE SCHEDULE—concluded.

ACTS—concluded.

No. and year.	Subject or Title.	Extent of Repeal.
XXIV. of 1866.	An Act to amend the procedure of the High Court of Judicature for the North-Western Provinces of the Presidency of Fort William.	Sections 2 to 17 (both inclusive).
XIII. of 1869.	An Act further to amend the procedure of the High Court of Judicature for the North-Western Provinces.	Sections 1 and 2, and so much of sections 3 and 4 as relates to criminal jurisdiction.
XXII. of 1870	An Act to confirm certain laws affecting European British subjects.	Section three.

STATUTES.

No. and year.	Title or abbreviated Title.	Extent of repeal.
13 Geo. III., c. 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 34. In Section 38 the words "and the Chief Justice and other Judges of the said Supreme Court of Judicature."
33 Geo. III., c. 52.	<i>An Act whose title begins with the words</i> An Act for continuing, and ends with the words and Bombay.	Sections 153 and 154.
53 Geo. III., c. 155.	<i>An Act whose title begins with the words</i> An Act for continuing, and ends with the words Company's Charter.	Sections 100, 102, 103.
9 Geo. IV., c. 74.	An Act for improving the administration of Criminal Justice in the East Indies.	The whole Act except the preamble and sections one, seven, eight, nine, twenty-five, twenty-six and fifty-six

WHITLEY STOKES,

Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 14th January 1875.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 22nd December 1874, and was referred to a Select Committee with instructions to make their report thereon in a month :—

Bill No. 19 of 1874.

A Bill to remove doubts as to the rights and liabilities of certain Native Soldiers.

WHEREAS doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts; It is hereby enacted as follows :—

1. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any Regiment, Corps, Depôt, Ordnance Establishment, or Department of Her Majesty's Indian Army (of which the last pay statement, if produced,

shall be evidence), shall be deemed to have been duly enlisted, enrolled and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment, or attestation, or on any other ground save such as may be recognised by the orders and customs of the service.

STATEMENT OF OBJECTS AND REASONS.

It has lately been discovered that certain men now serving in the Native Army were not duly attested on enlistment, and doubts have consequently been raised as to their rights and liabilities.

The present Bill, which is framed on the model of Section 59 of the English Mutiny Act, has accordingly been prepared. It simply declares that every soldier who has for six months received pay and been borne on the rolls, shall be deemed to have been duly enlisted, enrolled, and attested.

(Signed) H. W. NORMAN.

The 10th December 1874.

WHITLEY STOKES,

Secretary to the Government of India.