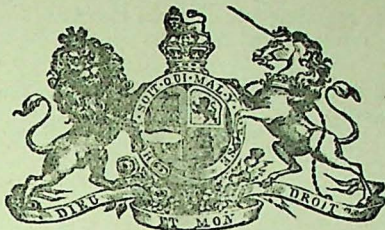


THE



# Bombay Government Gazette.

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*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 7th April 1874:—

We, the undersigned, the Members of the Select Committee to which the Bill to limit the jurisdiction

Office Memorandum from Department of Agriculture, Revenue, and Commerce, No. 130 T, dated 14th February 1873, and enclosures.

Office Memorandum from Department of Agriculture, Revenue, and Commerce, No. 251

L.-R., dated 2nd March 1873, and enclosures.

Office Memorandum from Department of Agriculture, Revenue, and Commerce, No. 469

L.-R., dated 10th June 1873.

From Private Secretary to His Excellency the Governor of Bombay, dated 6th August 1873.

Minute by the Honourable Mr. Tucker, with opinions of Messrs. Scoble and Mayhew, dated 13th July 1873.

From Chief Secretary to Government of Bombay, No. 5117-252 R., dated 12th September 1873.

From Chief Secretary to Government of Bombay, No. 5595-277 R., dated 8th October 1873.

From Chief Secretary to Government of Bombay, No. 6161-302 R., dated 7th November 1873.

Seventy-one petitions from Native inhabitants of several districts of Bombay.

From Honorary Secretary, Poona, Sarvajanak Sabhá, No. 381, dated 24th December 1873, and enclosures.

From Honorary Secretary, Bombay Association, dated 23rd December 1874, and enclosures.

Memorial from Honorary Secretary, Ahmedabad Association, dated 2nd January 1874.

been doubtless sent for signature to the various districts from which they emanate. They all seem to have been framed on an imperfect apprehension of the extent to which the law in the older provinces of the Bombay Presidency differs from the law prevailing in the rest of British India, a difference which recent events have brought into prominence.

We have made but two changes of importance, namely—

1st.—We have recast clause three, taking as our model to a great extent Section 241 of the recently enacted North-Western Provinces Land Revenue Act.



2ndly.—We have provided in clause four that, in every case in which, but for the passing of the proposed Act, a proceeding of a Settlement Officer or Collector would have been open to question in a Civil Court, an appeal to a higher revenue authority shall be allowed.

The enactments added to the repealing schedule are identical in wording with Section 6 of Bombay Regulation XXIX. of 1827 which was included in the schedule of the Bill as introduced. They are repealed as obsolete.

We think that the amended Bill, with this report, should be republished in the *Gazette of India* and the *Bombay Government Gazette*.

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

The 18th March 1874.

*A Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land Revenue. and for other purposes.*

[AS AMENDED BY THE SELECT COMMITTEE.]

WHEREAS in certain parts of the Presidency of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency :

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing :

And whereas it is also expedient to revive certain provisions of the thirteenth section of Regulation XVII. of 1827 of the Bombay Code, relative to the recovery of arrears of revenue, which were repealed by the Land Improvement Act, 1871 ;

It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1874."

Commencement. It shall come into force on the passing thereof ;

And it shall extend to all the territories under the government of the Governor of Bombay in Council, but not so as to effect—

Extent.

(a) any suit regarding the assessment or collection of revenue on land situate in any place which is a town or city within the meaning of Bombay Act No. IV. of 1868, or situate in the Presidency Collectorate,

(b) any claim to hold land wholly or partially exempt from payment of land revenue under or by virtue of an instrument or sanad given by the Governor of Bombay in Council under Bombay Act No. II. of 1863, section one, clause first, or Bombay Act No. VII. of 1863, section two, clause first, or

(c) any suit instituted on or before the seventh day of August 1873.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.

3. Notwithstanding anything contained in Bombay Regulations XVI. and XVII. of 1827, or the Bombay Survey and Settlement Act (I. of 1865), or in any other law now in force, no Civil Court shall exercise jurisdiction as to any of the following matters :—

(a) claims to any property of emolument appertaining to the office of Patel or Village Accountant or other village officer or servant : claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service ;

(b) claims to be entered in the settlement or village papers as liable for the land revenue : the validity of any engagement with Government for the payment of revenue of any kind : objections to the amount or incidence of any assessment of land revenue or cess or rate authorised by Government, of to the mode of assessment or to the principle on which such assessment is fixed ;

(c) claims connected with or arising out of any process enforced on account of non-acceptance of assessment on the terms proposed by a Settlement Officer ;

(d) the validity or effect of the notification of survey or settlement or of any notification determining the period of settlement ;

(e) the distribution of land or allotment of land revenue on partition of any estate as defined in Bombay Act No. I. of 1865 ;

(f) claims against the Government to Ináms, or to hold land wholly or partially free from payment of land revenue, or to receive payments charged on the land revenue ;

(g) claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue.

Any sum realizable under any Act for the time being in force in the same manner as land revenue shall, for the purposes of this section, be deemed to be land revenue.

4. In every case in which but for the passing of this Act a proceeding of a Settlement Officer or Collector would have been open to question in a Civil Court, any party aggrieved by such proceeding may, if no other appeal is given by any law for the time being in force, appeal, within



two months from the date of such proceeding, to the Commissioner of Revenue or, if so limited by the Local Government, to the Commissioner of Survey.

5. At the end of the schedule annexed to "The Land Improvement Act, 1871," instead of the words "section thirteen," there shall be read the words—"The following words in section thirteen (that is to say) 'and demands on account of money advanced as tukavee', and 'or of advances for former years.'"

#### SCHEDULE.

(See Section 2.)

#### ACT OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Title.	Extent of Repeal.
X. of 1848 ...	An Act for annexing the lapsed State of Mandvee to the Presidency of Bombay.	Section II.

#### ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Title or abbreviated Title.	Extent of Repeal.
III. of 1863 ...	An Act for bringing under the Regulations and Acts of the Presidency of Bombay the Territories of Satara, certain Villages and lapsed States in the Collectorate of Sholapur, &c.	Section III.

Number and year.	Title or abbreviated Title.	Extent of repeal.
XIV. of 1866 ...	An Act to bring the Pergunnas of Edulabad and Warrungaon under the general Regulations and Acts of the Presidency of Bombay.	Section II.

#### BOMBAY REGULATIONS.

XVII. of 1827 ...	A Regulation for the territories subordinate to Bombay, prescribing Rules for the assessment and realization of the Land Revenue, &c.	In Section IX. clause <i>second</i> , the word "either," and the words "or may file an action against the Collector in the Civil Court under the ordinary rules, or he may pursue both methods at the same time." In the same section, clause <i>third</i> , the words "but the reference to Government shall have no effect upon any suit instituted in the Civil Court." Section XVI. clause <i>fifth</i> .
XXIX. of 1872 ...	A Regulation for bringing under the operation of the Regulations the Bombay territories in the Dekkan and Khandesh.	Section VI. so much as is not repealed.

WHITLEY STOKES,

Secretary to the Government of India.

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 7th April 1874:—

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, and for other purposes was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. The Bill as introduced not only dealt with the Criminal Procedure of the four High Courts and the Chief Court of the Punjab, but also extended certain parts of the Criminal Procedure Code to the Courts of the Police Magistrates and to the Police of the Presidency towns. The

From Secretary to Government of Bengal, No. 6629, dated 23rd December 1871.  
 „ Registrar, High Court, Calcutta, No. 122, dated 10th February 1872.  
 „ Chief Secretary to Government, Bombay, No. 1016, dated 4th March 1872, and enclosures.  
 From Chief Secretary to Government, Madras, No. 45, dated 2nd April 1872, and enclosures.  
 Endorsement, Home Department, No. 69J, dated 10th January 1873, forwarding letter from Government of Bengal, No. 35, dated 3rd January 1873, and enclosures.  
 Endorsement, Home Department, 404J, dated 20th February 1873, forwarding letter from Chief Secretary to Government, Madras, No. 1707, dated 31st December 1872, and enclosures.  
 Note by Honourable A. G. Macpherson, dated 29th March 1873.  
 „ by R. Belchambers, Esq.  
 From Under-Secretary to Government of Bombay, No. 3489, dated 26th June, 1873, and enclosures.  
 From Secretary to Government of Bengal, No. 3848, dated 20th August 1873.  
 Endorsement, Home Department, No. 1657J, dated 2nd October 1873, forwarding letter from Government of Bengal, No. 6131, dated 28th November 1871, and enclosures.  
 From Registrar, High Court, Calcutta, No. 40, dated 27th January 1874.  
 From Secretary to Government, North-Western Provinces, No. 27, dated 29th January 1874, and enclosures.  
 From Honorary Secretary, Bombay Association, dated 28th January 1874, and enclosure.  
 From Registrar, High Court, Calcutta, No. 55, dated 7th February 1874, and enclosure.  
 Observations by J. Pitt Kennedy, Esq.  
 From Secretary to Government, Panjáb, No. 744, dated 21st February 1874, and enclosures.  
 Office Memorandum, Home Department, No. 379, dated 9th March 1874, and enclosures.  
 From Chief Secretary to Government, Madras, No. 385, dated 6th March 1874, and enclosures.



course of discussion on the two parts of the Bill has led us to think this combination undesirable, and we have accordingly divided the Bill into two, one dealing with the procedure of the High Courts, the other with that of the Courts of the Police Magistrates. The Presidency Police should, we think, be untouched.

The present report relates only to the criminal procedure of the High Courts.

3. We have altered the definition of 'Clerk of the Crown' (who must always be an officer of the Court) so as to preserve to each Chief Justice the power of appointing such officers which is conferred on him by the Letters Patent of the several High Courts.

4. We have omitted, as useless, in clause 4, the words 'four times at the least in every year.'

5. We have provided (clause 7) that the person charged shall be entitled to a copy of his own examination before the committing Magistrate.

6. With reference to Section 24 of the Letters Patent, we have made clause 8 (as to the effect of the charge) apply also to charges perferred by the Advocate General, or by any Magistrate or other officer specially empowered by Government.

7. We have altered clause 9 so as to make it expressly include the case where a portion only of a charge appears unsustainable, and we have extended the clause to cases in which, looking at the whole case, the Judge considers it highly improbable that a conviction will be obtained, or that it is for any other reason inexpedient to press the case.

8. We have omitted the provision that the entry mentioned in this clause shall operate as an acquittal on the expiration of three years from the time of making it. The case will be on the same footing as a case in which a Bill was ignored by the grand jury.

9. We have provided that in criminal cases transferred to a High Court under Section 64 of the Code of Criminal Procedure or under the Letters Patent, the trial may, if the Court so direct, be by jury.

10. Strong representations have been made to the Committee and to the Executive as to the serious inconvenience resulting from the frequency with which officials and others are taken from their business to serve on juries. This would of course be sensibly lessened by diminishing the number of the jury. We propose to reduce it to nine and thus to render the law in this respect identical in the Presidency towns and in the Mofussil when the maximum number is fixed under Section 236 of the Criminal Procedure Code.

11. In accordance with many opinions expressed in the papers referred to, we think it inexpedient to continue the old practice of requiring unanimity for a verdict, and, in lieu thereof, we have made the following provisions:—

"14. 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.

"15. 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.

"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."

12. We have also provided in accordance (it is believed) with the present practice, for the discharge of the jury whenever by reason of illness a jurymen becomes incapable of attending through the trial, or the prisoner becomes incapable of remaining at the bar.

13. We have provided (clause 17) that, whenever the jury discharged, the prisoner shall be detained and tried by another jury, unless the Judge considers that he should not be retried, in which case the Judge will make an entry to that effect on the charge, and the prisoner will be set at liberty.

14. We have also provided for successive trials by the same jury.

15. We have made the clauses (20, 21) as to the trials of European British subjects solely or when charged jointly with Natives apply to trials in the Presidency towns as well as to trials in the Mofussil.

16. We have empowered the Governor General in Council to exempt any salaried officer of Government from serving on juries.

17. A Judge of the High Court of Madras has advised that there should be express power given to the High Court to levy fines on persons summoned as jurors and failing to attend. He says that doubts are entertained whether such power exists. Although we do not share these doubts, we have thought it desirable to provide (clause 30) expressly for the matter. The Code of Criminal Procedure, Section 414, has a somewhat similar provision.

18. We have reduced the number of peremptory challenges from twenty in common juries and ten in special juries to eight, in all cases, on behalf of the Crown, and the same number on behalf of the prisoner.

19. Challenges on account of previous convictions should, we think, be confined to cases when the juror has been guilty of a non-bailable offence or a felony. We have altered the Bill accordingly.

20. We have declared (clause 32) that the Judge's decision as to any challenge shall be final.



21. We have exempted (clause 38) the High Courts from the operation of the following parts of the Code :—

## SECTION.

- 235 (Conduct of trial) ;
- 255, the last paragraph (Judge's charge) ;
- 263, the three last paragraphs (Procedure where the Court concurs and where it disagrees with the verdict) ;
- 287 (Sentence of death) ;
- 307, the last paragraph (Who may issue warrant for levy of fine) ;
- 332 (Manner of recording evidence) ;
- 341 (Remarks respecting demeanour of witness) ;
- 346 (Recording examination of accused) ;
- 363 (Right of accused as to examining and summoning witnesses) ;
- 405 and 406 (Disqualifications and exemptions of jurors) ;
- 435 to 438, both inclusive (Contempts of Court) ;
- 461 to 464, both inclusive (Of the judgment, order and sentence) ;
- 473 (Offences in contempt of Court).

22. As to the power to reserve a question of law, we have struck out the words requiring that the Judge reserving it shall be a member of the Court deciding the question. We have authorized the Judge to admit the convicted person to bail pending the decision. And we have omitted, as unnecessary, the paragraphs providing for the cases where the Judge reserves no such question and prescribing a procedure where the decision is adverse.

23. We have expressly declared (clause 42) that the provisions as to lunatics contained in chapter thirty-one of the said Code, and the following sections of the said Code (namely)—

- 308 (payment of fine in compensation) ;
- 418 (as to the disposal of property regarding which an offence has been committed) ;
- 446 (how Court may deal with charge) ;
- 489 (as to requiring, in case of conviction, a personal recognizance for keeping the peace) ; and
- 534 (as to restoring possession of immoveable property),

shall apply to the High Court, as if the words "High Court" were substituted for "Court of Session," wherever those words occur in the same chapter and section. And we have saved the provisions of the Prisoners' Act, 1871, sections seven and eight.

24. We have struck out chapter six (as to offences by European British subjects), partly because we believe its provisions to be obsolete, and partly because they do not, strictly speaking, relate to procedure.

25. We have extended to the Government Advocate, North-Western Provinces, the clause (now numbered 43) empowering the Advocates General, with the sanction of Government, to exhibit informations ; and we have enabled those officers, either with the previous sanction of the Government of India or with that of the Local Government to take action for all purposes for which the Attorney General may exhibit informations on behalf of the Crown in the Courts of Queen's Bench and Exchequer.

26. We have added a clause (numbered 44) empowering the Presidency High Courts to transfer to itself cases from the Police Magistrates. This we intend as a substitute for the power to issue a writ of *certiorari* conferred by 33 Geo. III, Chap. 52, Secs. 53, 54.

27. We have declared (clause 45) in accordance with 13 Geo. III., Chap. 63, Sec. 38, that the Judges of the High Courts shall *virtute officii* be Justices of the Peace for the whole of British India, and we have added to the schedule of repeals so much of that section as provides that the Judges of the Supreme Court shall be Justices of the Peace.

28. We have also added to the same schedule Act IV. of 1849 (as to criminal lunatics) : we have omitted therefrom Act XVIII. of 1859 (as to offences punishable on conviction before a Magistrate), and we have saved the first twenty-two words of Act IV. of 1866, Section. 20.

29. We recommend that the Bill as amended should be published with this Report in the *Gazette of India* and sent for consideration to the Local Governments and High Courts concerned, and that, in the meanwhile, its further consideration be stayed.

A. HOBHOUSE.

B. H. ELLIS.

E. C. BAYLEY.

CALCUTTA, the 23rd March 1874.



THE HIGH COURTS' CRIMINAL  
PROCEDURE BILL, 1874.

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*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, 1874:"  
Short title.  
Local extent. It extends to the whole of British India;  
Commencement. And it shall come into force on the first day of July 1874.
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—  
Interpretation-clause. "High Court" includes all High Courts established or to be established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, the Chief Courts of the Panjab 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 :

“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.” also a Police Magistrate in the Presidency Town.

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 ordinarily hold its sittings at the place at which it now holds them ; 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 Chief Justice appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette

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

CHAPTER III.

OF PROCEDURE ON COMMITMENTS.

6. 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.

The charge, with such alterations (if any), shall be recorded in the High Court, and the person charged shall be entitled to have a copy of such charge with such alterations (if any) gratis.

7. 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, on payment of a reasonable sum for the same, not exceeding one anna for each folio of ninety words.

8. Upon charges recorded as aforesaid, and on 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 contained in the Code of Criminal Procedure as to the amendment and alteration of charges, and subject also to the provisions of the next following section) shall be tried upon the charges so recorded.

9. 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, or when for any other reason a Judge of such Court considers that the trial should not proceed, 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.

10. Pending the directions of the High Court as to the place of trial, every person committed for trial before a High Court shall (if not out on 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 High 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.

11. The High 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 JURIES.

(a) Of Juries generally.

12. All trials under this Act shall be by jury ; and, notwithstanding anything contained in section sixty-four of the Code of Criminal Proce-



sure, in all criminal cases transferred to a High Court under that section or under the Letters Patent of any High Court established or to be established under the 24th and 25th of Victoria, Chapter 104, the trial may, if the High Court so direct, be by jury.

Number of jurors. 13. The jury shall consist of nine persons.

14. 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.

15. 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.

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.

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

17. 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 the prisoner shall be set at liberty.

18. Subject to the right of challenge herein-after mentioned, the same jury may try as many accused persons successively as the Judge thinks fit.

19. If any European British subject charged as aforesaid so require before the first juror is called and accepted, the majority of jurors shall consist of Europeans or Americans, or both Europeans and Americans.

20. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court, the person so jointly accused shall 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.

21. Provided that if before the jury is empanelled 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 an 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.

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

22. Every person tried in Calcutta, Madras Trials before special 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 direct.

23. 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.

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

25. 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.

26. The Clerk of the Crown, or such other officer as the Chief Justice directs, 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.

27. The Clerk of the Crown or other officer appointed by the Chief Justice 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.

28. 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.

29. Out of the names contained in the list aforesaid, there shall be summoned for each session 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.

30. Any persons so summoned who without lawful excuse fails to attend as required by the summons, or who having attended departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

31. Challenges without cause shown shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person charged. The following and no others shall be good causes of challenge, whether on behalf of the Crown or by the person charged:—

(1). 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:

(2). Some presumed or actual partiality in the juror:

(3). A previous conviction of the juror of a non-bailable offence under the Indian Penal Code, or of a felony under the criminal law administered in the Supreme Courts of Judicature or the Courts of the East India Company previously to the enactment of such Code.

32. The Judge before whom the person charged is about to be tried shall try any challenge, other than a challenge without cause shown, and if he allow the challenge the juror shall be set aside.

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

33. 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.

VI.—33

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.*

34. Whenever a High Court has given notice of its intention to hold summoning jurors. 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 take and cause to be taken the measures prescribed by Sections 407, 409, 410, 411 and 412 of the Code of Criminal Procedure for the summoning of jurors.

35. In addition to the persons so summoned as 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 in 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.

36. 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 under the said sections of the Code of Criminal Procedure, and from the Commissioned and Non-Commissioned Officers summoned as aforesaid, or, if no such officers have been summoned, then solely from the persons summoned, under the same sections.

CHAPTER V.

GENERAL PROVISIONS.

37. The High Courts shall try as Courts of Session all cases committed to them, and the trial of all such cases shall be subject to the provisions of this Act.

38. The High Courts are exempt from the operation of the following parts of the Code of Criminal Procedure (namely)—

SECTION.

235 (Conduct of trial);

255, the last paragraph (Judge's charge);

263, the three last paragraphs (Procedure where the Court concurs and where it disagrees with the verdict);

287 (Sentence of death);

307, the last paragraph (Who may issue warrant for levy of fine);



## SECTION.

- 332 }  
 334 } (Manner of recording evidence);  
 335 }  
 337 (Language in ordinary use);  
 338 (Form of record of evidence);  
 339 (Procedure where evidence of a witness is complete);  
 340 (Interpretation of evidence);  
 341 (Remarks respecting demeanour of witness);  
 346 (Recording examination of accused);  
 363 (Right of accused as to examining and summoning witnesses);  
 405 and 406 (Disqualifications and exemptions of jurors);  
 461 to 464, both inclusive (Of the judgment, order and sentence);  
 and in the case of High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four,  
 435 to 438, both inclusive (Contempts of Court).  
 473 Offences in contempt of Court);

The Court may, if it think fit, from time to time, Power to prescribe mode by general rule prescribe in which evidence shall be the manner in which evi- taken down. dence 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.

39. 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 think proper, may reserve 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.

If the Judge reserve 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.

40. Whenever any petition, application or motion is made in any matter coming before a High Court in the exercise of its criminal jurisdiction, the Court shall have power to award and apportion costs in any manner it may think fit.

41. Whenever any verified declaration in writing is filed in Court or used in support of any such petition, application or motion, the person making such verification shall if any such statement is false, and if he either knows or believes it to be false, or does not believe it to be true, be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

42. Save as is hereinbefore otherwise provided the Code of Criminal Procedure shall apply to the constitution and formation of juries for the purpose of trials before the High Court acting in the exercise of its original criminal jurisdiction, whether within or without the towns of Calcutta, Madras, and Bombay, and to trials before such Court, and to the carrying into execution of such sentences by such Court.

And in particular it is hereby expressly declared that the provisions as to lunatics contained in Chapter XXXI. of the said Code, and the following sections of the said Code (namely)—

- 308 (payment of fine in compensation);  
 418 (as to the disposal of property regarding which an offence has been committed);  
 446 (how Court may deal with charge);  
 489 (as to requiring, in case of conviction, a personal recognizance for keeping the peace); and  
 534 (as to restoring possession of immoveable property),

shall apply to the High Court, as if the words "High Court" were substituted for "Court of Session," wherever those words occur in the same chapter and sections.

Nothing in this section shall be deemed to affect the provisions of the Prisoners' Act, 1871, sections seven and eight.

## CHAPTER VI.

## MISCELLANEOUS.

43. The Advocate General at the several Presidencies of Fort William, Fort St. George and Bombay, and the Government Advocate of the North-Western Provinces, 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 or Exchequer.

Such proceedings may be taken upon every such information as may lawfully be taken, in case of similar information 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.

44. Whenever it appears to the High Court of Judicature at Fort William, Madras or Bombay that the direction next hereinafter 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.

45. 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.

Judges of High Courts to be Justices of the Peace *virtute officii*.

SCHEDULE.  
(See Section 2.)  
ACTS.

No. and year.	Subject or Title or abbreviated 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 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.
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).

No and year.	Subject or Title or abbreviated Title.	Extent of Repeal.
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.	Extent of repeal.
13 Geo. III., Cap. 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., Cap. 52.	An Act whose title begins with the words An Act for continuing, and ends with the words and Bombay.	Sections 153 and 154.
35. Geo. III., Cap. 155.	An Act whose title begins with the words An Act for continuing, and ends with the words Company's Charter.	Sections 100, 102, 103.
9. Geo. IV., Cap. 74.	An Act for improving the administration of Criminal Justice in the East Indies.	Sections 1, 2, 3, 4, 9, 10, 13, 14, 15, 21, 23, 24, 51 and 52.

WHITLEY STOKES,  
*Secretary to the Government of India.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th April 1874, and was referred to a Select Committee with instructions to make their report thereon in two months:—

Bill No. 6 of 1874.

*A Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns.*

For the purpose of extending certain parts of the Code of Criminal Procedure to the Courts of the Magistrates of Police in the Towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

Preamble.



1. This Act may be called "The Presidency  
Short title. Police Magistrates Act,  
1874":
- It extends to all places within the local limits  
Local extent. of the ordinary original  
criminal jurisdiction of  
the High Courts of Judicature at Fort William,  
Madras and Bombay;
- Commencement. And it shall come into  
force at once.
2. The enactments specified in the second sche-  
Repeal of enactments. dule hereto annexed shall  
be repealed to the extent  
mentioned in the third column of the same  
schedule.
3. The parts of the Code of Criminal Procedure  
mentioned in the first  
Parts of Criminal Pro- schedule hereto annexed  
cedure Code to apply to shall apply (so far as they  
Presidency Police Courts. are applicable and subject

to the modifications shown in the second column  
of the same schedule) to the Courts of the Magis-  
trates of Police in the towns of Calcutta, Madras  
and Bombay.

Nothing in this section shall be deemed to  
restrict any power conferred by any special or local  
law.

4. In the parts of the said Code so applied,  
the expressions 'Magis-  
'Magistrate of District' trate,' 'Magistrate of a  
to include 'Magistrate of District,' 'Magistrate of a  
Police.' Division of a District,'  
'Magistrate of the first class,' 'a competent Magis-  
trate,' 'Magistrate having jurisdiction,' and  
every other expression applicable to a Magistrate  
of the District, shall be deemed to include a  
Magistrate of Police.

### THE FIRST SCHEDULE.

(See Section 3.)

Parts of the Code applied.	Modifications.
<p>Chapter I, sections three (<i>Pending cases</i>) and four (<i>Definitions</i>):</p> <p>Chapter VI. (<i>The place of Inquiry and Trial</i>), the first sentence of section sixty-three and sections sixty-five to seventy, both inclusive:</p> <p>Chapter XI. (<i>Of Complaints to a Magistrate</i>):</p> <p>Chapter XII. (<i>Of the Summons</i>):</p> <p>Chapter XIII. (<i>Of the Warrant</i>), sections one hundred and fifty-nine to one hundred and seventy-four, both inclusive:</p> <p>Chapter XIV. (<i>Preliminary</i>):</p> <p>Chapter XV. (<i>Of Inquiry into Cases triable by the Court of Session or High Court</i>):</p> <p>Chapter XVI. (<i>Of the Trial of Summons Cases by Magistrates</i>):</p> <p>Chapter XXIII. sections three hundred and seven, three hundred and eight (except the penultimate clause), three hundred and nine, three hundred and eleven to three hundred and eighteen (both inclusive) and three hundred and twenty-two:</p> <p>Chapter XXIV. (<i>Special Rules of Evidence in Criminal Cases</i>):</p>	<p><i>Omit</i> the second clause of section one hundred and forty-four, and the whole of section one hundred and forty-six: In section one hundred and forty-eight, <i>after</i> the words "such Magistrate," <i>insert</i> the words "as may then be there."</p> <p>In section one hundred and fifty-two, <i>omit</i> the words "in duplicate." In section one hundred and fifty-four, <i>for</i> the words "one of the copies" <i>read</i> "the original" and <i>for</i> the words "the other copy" <i>read</i> "a copy."</p> <p>Except so far as they relate to the issue of warrants to persons other than Police officers.</p> <p><i>Omit</i> the last sentence of the first clause of section one hundred and ninety-eight.</p> <p><i>Omit</i> section two hundred and one and the second clause of section two hundred and two.</p> <p>To be applicable to all cases (whether summons cases or warrant cases) tried and disposed of by the Courts of the Police Magistrates.</p> <p><i>Omit</i> in section two hundred and six the last fourteen words.</p> <p><i>Omit</i> in section two hundred and twelve the second clause.</p> <p><i>Omit</i> the last proviso in section three hundred and twenty-eight.</p>



THE FIRST SCHEDULE.—*continued.*

Parts of the Code applied.	Modifications.
Chapter XXV. ( <i>Evidence how taken</i> ), sections three hundred and thirty-one, three hundred and forty, three hundred and forty-two to three hundred and forty-five (both inclusive), three hundred and forty-seven and three hundred and forty-nine :	Omit the last sentence of the second paragraph of section three hundred and sixty-two.
Chapter XXVI. ( <i>Of securing the Attendance of Witnesses</i> ) :	Omit section three hundred and seventy-nine to section three hundred and eighty-seven (both inclusive).
Chapter XXVII. ( <i>Of Search Warrants</i> ) :	Omit section three hundred and ninety, and the last two paragraphs of section three hundred and ninety-eight.
Chapter XXVIII. ( <i>Bail</i> ) :	
Chapter XXX. ( <i>Miscellaneous Provisions</i> ), sections four hundred and eighteen, four hundred and twenty-one, and four hundred and twenty-two :	
Chapter XXXI. ( <i>Lunatics</i> ) :	
Chapter XXXII. ( <i>Contempts of Court</i> ) :	
Chapter XXXIII. ( <i>Of the Charge</i> ) :	
Chapter XXXIV. ( <i>Of the Judgment, Order and Sentence</i> ), section four hundred and sixty-one :	Omit section four hundred and fifty-one.
Chapter XXXV. ( <i>Prosecutions in certain Cases</i> ) :	
Chapter XXXVII. ( <i>Of Security for keeping the Peace</i> ) :	Omit the two last clauses of section four hundred and eighty-nine.
Chapter XXXVIII. ( <i>Of Security for Good Behaviour</i> ) :	
Chapter XXXIX. ( <i>Local Nuisances</i> ) :	
Chapter XLI. ( <i>Of the Maintenance of Wives and Families</i> ) :	
Chapter XLII. ( <i>Miscellaneous</i> ), section five hundred and thirty-nine.	

## THE SECOND SCHEDULE.

(See Section 2.)

## Acts.

No. and year.	Title or Subject.	Extent of repeal.
XIII. of 1856 ...	Presidency Towns Police. ... ..	Sections ninety-seven and ninety-eight.
XLVIII. of 1860 ...	Amending Act XIII of 1856. ... ..	Sections six and ten.
XXI. of 1864 ...	An Act for the extension of the jurisdiction of the Magistrates of Police in Calcutta.	Sections two and three.
Madras Act VIII. of 1867.	Madras Town Police and Police Magistrates ...	Sections sixteen, twenty-one, sixty-one, sixty-two, seventy-one, and seventy-two.
Bengal Act IV. of 1866.	The Calcutta Police Act, 1866... ..	Sections twenty-eight, thirty, eighty-five, eighty-six, and ninety-six.

## \* STATEMENT OF OBJECTS AND REASONS.

The Select Committee to which the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes was referred, have already reported on so much of that Bill as relates to the Criminal Procedure of the High Courts. In that report the Committee explained that the course of discussion had led them to think it undesirable to deal in the same measure with two subjects so unconnected as the Criminal Procedure of the four High Courts and the Chief Court of the Panjáb, and the Procedure of the Presidency Police Magistrates, and that the Bill had therefore been divided into two. The present Bill represents so much of the original Bill as related to the Police and to the procedure of the Police Magistrates in the Presidency towns.



2. The original Bill as introduced applied to the Police of the Presidency towns several chapters and sections of the Code of Criminal Procedure and, in particular, it proposed that Police Magistrates should exercise the miscellaneous powers conferred on a Magistrate of the District by Section 30 of the Code. The Madras Government, however, has recently represented that these provisions would materially affect the constitution of the Police, and otherwise involve violent and undesirable changes in the relations at present existing between the Police and the Magistracy. In consequence of this opinion the present Bill omits from the list of chapters and sections of the Code appended to clause 40 of the Bill as introduced those that have reference to the Police, namely, Chapters IX. and X. and Sections 146, 176—181, 379—387, 415, 416, 417. The present Bill merely proposes to assimilate the judicial procedure of the Police Magistrates to that prescribed for Magistrates in the Mofussil.

3. The Bill proposes to repeal certain sections of the Police Acts, now in force in the Presidency towns, which Sections will be superseded by the extension of Sections 141, 142, 148, 149, 157, 308, and Chapters XXVIII. and XLI. of the Code of Criminal Procedure.

4. The Bill omits, as unnecessary, the following parts of the Code: Sections 175 and 201, the penultimate clause of Section 308, the last proviso in Section 328, the last sentence of clause 2 of Section 362, Section 390, the penultimate paragraph of Section 398, Sections 419 and 420, and the last two clauses of Section 489.

5. Chapter VII. of the Code (as to European British subjects) has been omitted as introducing an unnecessary and invidious distinction between European and Native Magistrates.

6. Section 148 of the Code has been modified so as to enable a case to be heard by a Magistrate other than the Magistrate by whom the summons was issued.

7. Chapter XII. of the Code, Sections 152, 154, has been modified so as to relieve the Police Court from the useless expense and labour of preparing in all cases copies of summonses.

8. Sections 159 to 174 of the Code will not apply so far as they relate to the issue of warrants to persons not being police officers.

9. In applying Chapter XV., the last sentence of the first clause of Section 198 and the second clause of Section 202 have been omitted.

10. Chapter XXXVI. (*of the dispersion of unlawful assemblies*) is omitted, as that chapter is to be expressly extended by the Bill to amend the Code of Criminal Procedure.

11. In the parts of the Code, which it is proposed to apply to the Presidency towns, the expressions 'Magistrate', 'Magistrate of a District,' &c., will include a Magistrate of Police.

12. The High Court at Fort William has represented to the Government of India in the Legislative Department that the limits which now restrict the jurisdiction of the Police Magistrates in the matter of trying offences depend too much upon the artificial element of value; and the consequence is that a very large portion of the time of jurors and High Court Judges at the Criminal Sessions is taken up in disposing of trivial cases which might have inexpensively, and most satisfactorily, been dealt with finally by the Magistrate himself at, perhaps, the first hearing. The Court thinks that this mischief ought to be removed by the proposed Act, and suggests that a good mode of doing so would be by defining the jurisdiction of the Police Magistrates after the method adopted for Magistrates in the Criminal Procedure Code.

13. The Government of India feel the force of this representation, and are inclined to adopt the suggestion so made for the removal of the evil complained of. But before doing so, it is thought desirable that the Local Governments and the Presidency High Courts should be invited to define more precisely the mode in which and the limits to which relief may be given to the High Courts in this respect; and it is proposed that the present Bill together with this Statement should be sent to the Local Governments and High Courts concerned, with a view to obtaining the information above indicated.

(Signed) A. HOBHOUSE,

The 5th April 1874.

WHITLEY STOKES,  
Secretary to the Government of India.