

CHAPTER XIII.

OF THE CHARGE.

What the charge is to contain.

233. When the Magistrate has determined to send the accused person before the Court of Session for trial, he shall make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct the accused person to be tried by such Court on such charge. A copy of this instrument shall be forwarded with the record of the preliminary enquiry to the Court of Session before which the accused person is to be tried, and a copy shall also be sent to the Public Prosecutor or to the Officer appointed to conduct the prosecution.

How the offence is to be described.

234. The charge shall describe the imputed offence as nearly as possible in the language of the Indian Penal Code, and shall refer to the Section under which such offence is punishable.

Absence of General Exceptions under the Penal Code to be assumed.

235. It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come within any of the General Exceptions contained in Chapter IV of the Indian Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

Evidence as to General Exception.

236. It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the accused person shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

Special ground of exception from absence of circumstances not to be assumed.

237. When the Section referred to in the charge contains an exception not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the Section, without a distinct denial of the existence of such circumstances.

238. The charge may contain one or more heads.

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239. When a charge contains one head only, the form shall be as follows, or to the same effect :

Heads of charge—

(a.) I, A [*name and Office of Magistrate, &c.,*] declare that there is hereby made against Z the charge—

(b.) That he, on or about the day of at , waged war against the Queen, and that he has thereby committed an offence punishable under Section 121 of the Indian Penal Code, (c) and within the cognizance of the Court of Session.

(d.) And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

To be substituted for (b).

(2.) That he, on or about the day of at , with the intention of inducing the Honorable A. B., a Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and that he has thereby committed an offence punishable under Section 124 of the Indian Penal Code, and within the cognizance of the Court of Session.

(3.) That he, being a public servant in the Department, directly accepted from [*state the name*] for another party [*state the name*] a gratification, other than legal remuneration, as a motive for his, the said Z's, forbearing to do an official act, and that he has thereby committed an offence punishable under Section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

(4.) That he, on or about the day of at , committed culpable homicide not amounting to murder, causing the death of , and that he has thereby committed an offence punishable under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

(5.) That he, on or about the day of at ,
 abetted the commission of suicide by A. B., a person in a
 state of intoxication, and that he has thereby committed an
 offence punishable under Section 306 of the Indian Penal
 Code, and within the cognizance of the Court of Session.

(6.) That he, on or about the day of at ,
 voluntarily caused grievous hurt to and that he has
 thereby committed an offence punishable under Section 325
 of the Indian Penal Code, and within the cognizance of the
 Court of Session.

(7.) That he, on or about the day of at ,
 committed robbery, and that he has thereby committed an
 offence punishable under Section 392 of the Indian Penal
 Code, and within the cognizance of the Court of Session.

(8.) That he, on or about the day of at ,
 committed dacoity, and that he has thereby committed an
 offence punishable under Section 395 of the Indian Penal
 Code, and within the cognizance of the Court of Session.

And the same form shall be followed, as nearly as may
 be, in charges with one head only, under other Sections of
 the Indian Penal Code.

Charges in cases
 falling within two
 or more Sections of
 the Penal Code.

240. When it appears to the Magistrate that the facts
 which can be established in evidence show a case falling
 within two or more Sections of the Indian Penal Code, the
 charge shall contain two or more heads, each of which shall
 be applicable to one of such Sections.

Two or more offences
 punishable under the same
 Section.

241. When it appears to the Magistrate that the facts
 which can be established in evidence show the commission
 of two or more offences falling within the same Section of
 the Indian Penal Code, the charge shall contain two or more
 heads charging such offences respectively.

Cases of doubt as
 to the Section
 which is applica-
 ble, or the offence
 which may be
 proved.

242. When it appears to the Magistrate that the facts
 which can be established in evidence show a case falling
 within some one of two or more Sections of the Indian
 Penal Code, but it is doubtful which of such Sections will

be applicable, or show the commission of one, of two or more offences falling within the same Section of the said Code, but it is doubtful which of such offences will be proved, the charge shall contain two or more heads, framed respectively under each of such Sections, or charging respectively each of such offences accordingly.

243. When a charge contains more heads than one, the form shall be as follows, or to the same effect :—

Forms of charge
of more than one
head.

I, A [*name and office of Magistrate or other Officer as aforesaid, &c.*,] declare that there is hereby made against Z the charge :

First:—That he, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and that he has thereby committed an offence punishable under Section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly:—That he, on or about the day of at , knowing a coin to be counterfeit, attempted to induce another person by name A. B. to receive it as genuine, and that he has thereby committed an offence punishable under Section 242 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct that Z be tried by the said Court on the said charge.

[*Signature and Seal of the Magistrate.*]

First:—That he, on or about the day of at , committed murder by causing the death of , and that he has thereby committed an offence punishable under Section 302 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly:—That he, on or about the day of at , by causing the death of , committed culpable homicide, and that he has thereby committed an offence punishable

under Section 304 of the Indian Penal Code, and within the cognizance of the Court of Session.

First :—That he, on or about the day of at , committed theft, and that he has thereby committed an offence punishable under Section 379 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly :—That he, on or about the day of at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Thirdly :—That he, on or about the day of at , committed theft, having made preparation for causing restraint to a person in order to the effecting of his escape after the committing of such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly :—That he, on or about the day of at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and that he has thereby committed an offence punishable under Section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

And the same form shall be followed, as nearly as may be, in charges with more heads than one, under other Sections of the Indian Penal Code.

Amendment of charge.

244. It shall be competent to any Court before which a trial is held, at any stage of the trial, to amend or alter the charge.

When the trial may be proceeded with forthwith after amendment.

245. 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 the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

246. 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, may 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 a new trial may be ordered, or trial suspended.

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

Defendant may recall and examine witnesses already examined.