

CHAPTER XXV.

TRIALS BEFORE THE COURT OF SESSION.

359. Except in the case referred to in Section 172 of this Act, a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence but upon a charge preferred by a Magistrate or other Officer specially empowered under this Act or under any other law to make commitments to such Court.

Cognizance of offences by the Court of Session in original jurisdiction.

360. In every trial before a Court of Session the prosecution shall be conducted by the Government Pleader or by some other Officer specially empowered in that behalf, and the complainant, if there be a complainant, shall be examined as a witness in the case.

Every trial before Court of Session to be conducted by Government Pleader, &c.

361. A Court of Session may direct the postponement of a trial, when it is satisfied that such postponement is proper and will promote the ends of justice.

Postponement of trial.

362. 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. If the accused person plead guilty, the plea shall be recorded, and the accused may be convicted thereon:

Commencement of trial.

363. If the accused person shall refuse to plead, or shall claim to be tried, the Court shall proceed to try the case, taking all the evidence that is forthcoming.

Refusal to plead or plea of claim.

364. The provisions of Sections 195, 196, 197, 198, 199, and 200, of this Act, relating to the examination of parties and witnesses, the mode of recording evidence, and the correction, attestation, and interpretation thereof in trials before the Magistrate, shall be applicable to trials before the Court of Session under this Chapter.

Provisions relating to examination of parties, &c., in trials before Magistrate to be applicable to trials before Court of Session.

365. If any witness shall refuse to answer any question which shall be put to him, and shall not offer any just

Witness refusing to answer may be committed to custody.

excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer. In the event of such witness persisting in his refusal, he may be dealt with according to the provisions of Section 163 of this Act.

Examination of accused before the Magistrate to be evidence at the trial.

✕ 366. The examination of the accused person before the Magistrate shall be given in evidence at the trial. The attestation of the Magistrate shall be sufficient *prima facie* proof of such examination, and such attestation shall be admitted without proof of the signature to it, unless the Court shall see reason to doubt its genuineness.

Court may summon necessary evidence.

✕ 367. It shall be in the discretion of the Court, at any stage of a trial, to summon and examine any witness whose evidence it shall consider essential to the just decision of the case. The Court may also examine as a witness any person in attendance although not summoned as a witness.

Evidence of medical witness.

✕ 368. The Court shall receive as *prima facie* evidence the examination of a Civil Surgeon or other medical witness taken and duly attested by the Magistrate. Provided that it shall be competent to the Court to Summon such Civil Surgeon or other Medical witness, if it shall see sufficient cause for doing so.

Examination of witness taken and attested by Magistrate when admissible.

✕ 369. The examination of a witness taken and attested by the Magistrate in the presence of the accused person may be given in evidence if the witness be dead or the Court be satisfied that for any sufficient cause his attendance cannot be procured.

Report of Chemical Examiner admissible in evidence.

✕ 370. Any document purporting to be a report from the 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 enquiry relating thereto, shall be received in evidence at a trial by the Court of Session, if it bear the signature of such Examiner, and no proof of such signature or that the person signing holds such office, shall be requisite unless the

Court shall see reason to doubt the genuineness of the document.

X 371. The declaration of a deceased person, whether it be made in the presence of the accused person or not, may be given in evidence if the deceased person at the time of making such declaration believed himself to be in danger of approaching death, although he entertained at the time of making it hopes of recovery.

Dying
ration. decla-

372. When the case for the prosecution has been brought to a close, the accused person shall be called upon to enter upon his defence, and to produce his evidence.

Defence.

X 373. The Court, at the close of the evidence on behalf of the accused person if any evidence is adduced on behalf, or otherwise at the close of the case for the prosecution, may put any question to the accused person which it may think proper. It shall be in the option of the accused person to answer such question.

When accused
person may be
examined.

374. The accused person or his Counsel or Agent may, at his option, address the Court at the close of the case for the prosecution, or at the close of any evidence that may be adduced on his behalf, or if any question shall be put to the accused person by the Court, after such question shall have been so put.

When accused
person may address the
Court.

375. 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 be entitled of right to have any other witness summoned than the witnesses named in the list delivered to the Magistrate by whom he was committed or held to bail for trial, except as provided in Section 246 of this Act.

Witness for the
defence.

376. If any evidence is adduced on behalf of the accused person, or if the answers any question put to him by the Court, the prosecutor, or the Counsel or Agent for the prosecution, shall be entitled to a reply.

Prosecutor's
right of reply.

Adjournment.

377. The Court may in its discretion, from time to time, adjourn the trial as may be necessary.

Jury or Assessors
to attend at ad-
journed sitting.

378. In the event of the adjournment of a trial by Jury or with the aid of Assessors, the Jury or Assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial ; and any Juror or Assessor who shall without lawful excuse fail so to attend, shall be liable to the penalty prescribed in Section 354 of this Act, and such penalty shall be enforced in the manner therein prescribed.

Of verdict of
Jury.

379. In a trial by Jury, the Judge shall sum up the evidence on both sides, and the Jury shall then deliver their finding upon the charge. A statement of the Judge's direction to the Jury shall form part of the record. In trials not by Jury, the ground of the Judge's decision shall be recorded.

Acquittal or con-
viction.

380. If the accused person is acquitted, the Court shall record a judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence upon him according to law. Provided that if the Court pass sentence of death, the sentence shall not be executed without the confirmation of the Sudder Court. If the accused person shall be convicted of an offence which by the Indian Penal Code is punishable with death, and the Court shall sentence such person to any punishment other than death, the Court shall state the grounds upon which it remitted the punishment of death in the statement of trials to be periodically submitted to the Sudder Court, as hereinafter required, under the head of " Sentences passed upon the accused persons."