

1872

Act X.

Act No. X.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN
COUNCIL.

*Received the assent of his Excellency the Governor-General on the
25th April 1872.*

*An Act for regulating the Procedure of the Courts of Criminal
Judicature.*

WHEREAS it is expedient to consolidate and amend the law
regulating the Procedure of the Courts of
Criminal Judicature, other than the High
Courts in Presidency towns in the exercise of their original
criminal jurisdiction, and the Courts of Police Magistrates in such
towns; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY, REPEAL, LOCAL EXTENT AND DEFINITIONS.

1. This Act may be called "The Code
of Criminal Procedure."

It extends to the whole of British India, but shall not, except
as hereinafter provided, affect the procedure of the High Courts or Police
Magistrates in Presidency towns;

And it shall come into force on the first
day of September 1872.

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annexed are repealed to the extent specified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

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

Saving of special procedure.

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In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

References to Code of Criminal Procedure.

In every Act passed before this Act, the expressions "Officer exercising the powers of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

References in former Acts.

The references made in the enactments specified in column one of the fifth schedule hereto to the sections of the former Code of Criminal Procedure specified in column two of the said schedule, shall be deemed to be made to the sections of this Code directed in the third column of the said schedule to be substituted for the said sections in column two.

Certain specified references.

Notifications published and orders made under any section of any Act hereby repealed shall be deemed to have been published and made under the corresponding section of this Act.

3. Cases pending in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

Pending cases.

4. In this Act the following words and expressions have following meanings unless a different intension appears from the context:—

Definitions.

"Special law."

"Special law" means a law applicable to a particular subject.

"Local law."

"Local law" means a law applicable to a particular part of British India.

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“Investigation.” “Investigation” includes all the proceedings by the Police, authorized by this Act, for the collection of evidence.

“Inquiry.” “Inquiry” includes any inquiry which may be conducted by a Magistrate or Court under this Act.

“Inquired into.” “Inquired into” means and includes every proceeding preliminary to trial.

“Trial” means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender.

“Trial.” It includes the proceedings under Chapters XVI and XVIII from the time when the accused appears in Court.

“Judicial proceeding” means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence or final order is passed on recorded evidence.

“Judicial Proceeding.” “Written” includes “printed,” “lithographed,” “photographed,” and “engraved.”

“Written.” “Criminal Court” means and includes every Judge or Magistrate, or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

“Criminal Court.” “Province” means the territories under the Government or Administration of any

Local Government.

“Province.” “Presidency town” means the local limits of the ordinary original civil jurisdiction of the High Courts of Calcutta, Madras or Bombay.

“Presidency town.” “High Court” means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects,

“High Court.” the High Courts of Calcutta, Madras, Bombay, the High Court, for the North-Western Provinces, and the Chief Court of the Panjáb.

In other cases “High Court” means the highest Court of Criminal appeal or revision in any province.

“Session case” means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session although they might have tried them themselves.

In the case of offences created by special and local laws, “Session case” means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session, though he might have tried them himself.

“Magistrate’s case” means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

“Cognizable offence or case” means an offence for or a case in which a Police officer may, by any law in force for the time being, arrest without warrant.

“Non-cognizable offence or case” means an offence for or a case in which a Police officer may not arrest without warrant.

“Summons case” means an offence of the class described in section one hundred and forty-eight.

“Warrant case” means an offence of the class described in section one hundred and forty-nine.

“Bailable offence or case” means an offence for or a case in which bail may be taken under the fourth schedule to this Act, or by any other law in force for the time being.

“Non-bailable offence or case” means an offence for or a case in which bail may not be taken under the fourth schedule to this Act, or by any law in force for the time being.

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.

OF CRIMINAL COURTS.

Grades of Criminal Courts.

British India—

I.—The Court of the Magistrate of the 3rd class.

II.—The Court of the Magistrate of the 2nd class.

III.—The Court of the Magistrate of the 1st class.

IV.—The Court of Session.

What Officers to hold inquiries.

inafter contained.

What Courts to try offences.

in any law by which the offence is created, according to the provisions hereinafter contained.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

A Magistrate of the third class shall not try any such offence unless it is punishable with less than one year's imprisonment, nor shall a Magistrate of the second class try any such offence unless it is punishable with less than three years' imprisonment.

9. All Judges of Criminal Courts, other than the High Courts, and Magistrates shall be appointed and may be removed by the Local Government; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

Appointment and removal of Judges and Magistrates.

5. Besides the High Courts, there shall be four grades of Criminal Courts in

6. All inquiries by Magistrates shall be held according to the provisions here-

7. All criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified

Penal Code, containing no distinct provi-

sion as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its powers.

Courts, and Magistrates shall be appointed and may be removed by the Local Govern-

ment; but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

Saving of existing incumbents.

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11. Offences committed by European British subjects shall be inquired into and tried according to the provisions of Chapter VII, and not otherwise; but the other provisions of this Act shall apply to all persons without distinction of race unless a contrary intention is expressed.

Inquiry and trial in case of European British subjects.

CHAPTER III.

OF COURTS OF SESSION.

Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

13. The Local

Government shall have power to alter, from time to time, the number or extent of such Divisions.

Power to alter Divisions.

Existing local jurisdictions of Sessions Courts to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so altered.

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

16. There shall

be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of

Appointment and powers of Sessions Judges.

Session in his Sessions Division.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such

Appointment and powers of Additional and Joint Sessions Judges.

cases only as the Local Government directs the

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18. The Local Government may also appoint Assistant Sessions Judges who shall all exercise the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of hearing appeals, and of passing sentences of death, or transportation, or imprisonment for more than seven years; but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Appointment and powers of Assistant Sessions Judges.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

CHAPTER IV.

OF MAGISTRATES AND THEIR POWERS.

19. Magistrates shall be either—

Magistrates to be of three classes.

Magistrates of the 1st class,
Magistrates of the 2nd class, or
Magistrates of the 3rd class.

20. The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows—

Sentences which Magistrates may pass.

Powers of Magistrates, first class.

Magistrates of the first class may pass the following sentences :—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);

Fine to the extent of one thousand rupees;

Whipping.

Powers of Magistrates, second class.

Magistrates of the second class may pass the following sentences :—

Imprisonment not exceeding six months (including such solitary confinement as is authorized by law);

... exceeding two hundred rupees;

Powers of Magistrates,
third class.

Magistrates of the third class may pass
the following sentences:—

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Imprisonment not exceeding one month ;

Fine not exceeding fifty rupees.

A Magistrate of the third class may not pass a sentence of solitary confinement, or of whipping.

Any Magistrate may pass any lawful sentence, combining any of the sentences which he is authorized by law to pass.

EXPLANATION.—A Magistrate may award imprisonment in default of payment of fine in addition to the full term of imprisonment which, under this section, he is competent to award.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

Powers conferred upon
Magistrates.

- (1.) Power to make over cases to a Subordinate Magistrate (s. 44).
- (2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate (s. 46).
- (3.) Power to withdraw cases and try or refer them for trial (s. 47).
- (4.) Power to withdraw or refer appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 47).
- (5.) Power to arrest an accused person found in Court (s. 104).
- (6.) Power to order the Police to investigate an offence (s. 110).
- (7.) Power to record confessions or statements during a Police investigation (s. 122).
- (8.) Power to authorize detention of a person during a Police investigation (s. 124).
- (9.) Power to hold an inquest (s. 135).
- (10.) Power to entertain complaints and receive Police reports (s. 141).
- (11.) Power to entertain cases without complaint (s. 142).
- (12.) Power to commit for trial (s. 143).

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- (13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).
- (14.) Power to direct warrant to landholder (s. 162).
- (15.) Power to arrest offender in presence of Magistrate (s. 166).
- (16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).
- (17.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).
- (18.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).
- (19.) Power to try summarily (s. 222).
- (20.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).
- (21.) Power to call for proceedings (ss. 295 and 296).
- (22.) Power to quash convictions in certain cases (s. 328).
- (23.) Power to issue a search-warrant for letter in Post Office (s. 369).
- (24.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373, and 376).
- (25.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).
- (26.) Power to revise bail orders (s. 398).
- (27.) Power to sell perishable property of a suspicious character (s. 415).
- (28.) Power to sell suspicious or stolen property (s. 417).
- (29.) Power to demand security to keep the peace (s. 491).
- (30.) Power to discharge recognizances to keep the peace (s. 500).
- (31.) Power to demand security for good behaviour (ss. 504 and 505).
- (32.) Power to discharge person bound to be of good behaviour (s. 511).
- (33.) Power to issue order to prevent obstruction, &c. (s. 518.)

- (34.) Power to issue order prohibiting repetition of nuisance (s. 519).
- (25.) Power to make orders, &c., in local nuisance cases (s. 521).
- (36.) Power to make orders, &c., in possession cases (s. 530).
- (37.) Power to make orders of maintenance (s. 536).

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Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

- (1.) Power to arrest an accused person found in Court (s. 104).
- (2.) Power to record confessions or statements during a Police investigation (s. 122).
- (3.) Power to authorize detention of a person during a Police investigation (s. 124).
- (4.) Power to arrest offender in the presence of Magistrates (s. 166).
- (5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant (ss. 168 and 170).
- (6.) Power to issue proclamation in cases judicially before him (ss. 171 and 353).
- (7.) Power to attach and sell property in cases judicially before him (ss. 172 and 354).
- (8.) Power to endorse a search-warrant and order delivery of thing found (ss. 372, 373 and 376).
- (9.) Power to sell perishable property of a suspicious character (s. 415).

Powers which Local Government and Magistrate of the District may confer on Magistrates of the 3rd class.

23. In addition to the powers mentioned in section twenty-two a Magistrate of the 3rd class may be invested with the following powers:—

- (a.) By the Local Government—
- (1.) Power to hold inquests (s. 135).
- (2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).
- (3.) Power to commit for trial (s. 143).

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(4.) Power to issue order to prevent obstruction, &c.
(s. 518.)

(5.) Power to issue order prohibiting repetition of nuisance
(s. 519).

(b.) By the Magistrate of the District—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to issue order to prevent obstruction, &c.
(s. 518.)

(4.) Power to issue order prohibiting repetition of nuisance
(s. 519).

24. Magistrates of the 2nd class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power:—

Powers of Magistrates
of the 2nd class.

(1.) Power to order the Police to investigate an offence in which the Magistrate has jurisdiction to try or to commit for trial (s. 110).

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the 2nd class may be invested with the following powers:—

Powers which may be
conferred on Magistrates
of the 2nd class.

(a.) By the Local Government—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial (s. 142).

(4.) Power to commit for trial (s. 143).

(5.) Power to issue order to prevent obstruction, &c. (s. 518.)

(6.) Power to issue order prohibiting repetition of nuisance
(s. 519).

(b.) By the Magistrate of the District—

(1.) Power to hold inquests (s. 135).

(2.) Power to entertain complaints and receive Police reports in cases in which he has jurisdiction to try or to commit for trial (s. 141).

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(3.) Power to issue order to prevent obstruction, &c. (s. 518.)

(4.) Power to issue order prohibiting repetition of nuisance (s. 519).

26. Magistrates of the 1st class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers:—

Powers of Magistrates of the 1st class.

(1.) Power to commit for trial (s. 143).

(2.) Power to issue search-warrant otherwise than in the course of an inquiry (s. 377).

(3.) Power to demand security to keep the peace (s. 491).

(4.) Power to demand security for good behaviour (ss. 504 and 505).

(5.) Power to make orders, &c., in possession cases (s. 530).

(6.) Power to make orders of maintenance (s. 536).

27. In addition to the powers given and referred to in sections twenty-six, a Magistrate of the first class may be invested with the following powers:—

Powers which may be conferred on Magistrates of the 1st class.

(a.) By the Local Government—

(1.) Power to make over cases taken up on complaint, &c., to a Subordinate Magistrate (s. 44).

(2.) Power to hold inquests (s. 135).

(3.) Power to entertain complaints of offences, and receive Police reports (s. 141).

(4.) Power to entertain cases without complaint (s. 142).

(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).

(6.) Power to try summarily (s. 222).

(7.) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).

(8.) Power to sell suspicious or stolen property (s. 417).

(9.) Power to issue order to prevent obstruction, &c. (s. 518.)

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- (10.) Power to issue order prohibiting repetition of nuisance (s. 519).
- (11.) Power to make orders, &c., in local nuisance cases (s. 521).
- (b.) By the Magistrate of the District—
 - (1.) Power to hold inquests (s. 135).
 - (2.) Power to entertain complaints of offences, and receive Police reports (s. 141).
 - (3.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (4.) Power to issue order prohibiting repetition of nuisance (s. 519).

28. Magistrates who, under the provisions of section forty, are Magistrates of Divisions of Districts shall, as such, have all the powers given to Magistrates of the first class, and referred to in section twenty-six, and, in addition, shall have the following powers:—

- (1.) Power to make over cases to a Subordinate Magistrate (s. 44).
 - (2.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate (s. 46).
 - (3.) Power to withdraw cases, but not appeals, and to try or refer them for trial (s. 47).
 - (4.) Power to hold inquests (s. 135).
 - (5.) Power to entertain complaints of offences, and receive Police reports (s. 141).
 - (6.) Power to entertain cases without complaint (s. 142).
 - (7.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction (s. 157).
 - (8.) Power to sell suspicious or stolen property (s. 417).
 - (9.) Power to issue order to prevent obstruction, &c. (s. 518.)
 - (10.) Power to issue order prohibiting repetition of nuisance (s. 519).
 - (11.) Power to make orders in local nuisance cases (s. 521).
- Provided that, if a Magistrate of a Division of a District exercise the powers of a Magistrate of the second class, he shall not have power to demand security to be of good behaviour.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a Magistrate of the first class, the following powers:—

Powers which Local Government may confer on Magistrates of Divisions of Districts.

- (1) Power to try summarily (s. 222).
- (2) Power to hear appeals from convictions by Magistrates of the 2nd and 3rd classes (s. 266).

Powers of Magistrates of Districts.

30. Magistrates of Districts may, as such, exercise all the powers mentioned in

section twenty-one.

31. All other powers given by this Act or by any other law in force may be exercised by the Officers or Courts to whom or to which they are given.

Saving of other powers.

Irregularities which do not vitiate proceedings.

32. If any Magistrate, not being empowered by law in that behalf, does any one

of the following things:—

- (1) If he makes over a case, taken up on complaint, &c., to another Magistrate,
- (2) If he withdraws a case and tries it himself, or refers a case for trial,
- (3) If he orders the Police to investigate an offence,
- (4) If he holds an inquest,
- (5) If he entertains a complaint or receives a Police report,
- (6) If he issues process for the apprehension of a person within his local jurisdiction who has committed an offence outside his local jurisdiction,
- (7) If he issues a search-warrant otherwise than in the course of an inquiry,

his proceedings shall not be set aside on the ground that he was not so empowered.

33. If any Magistrate, not being empowered by law, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of

When irregular commitments may be validated.

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the committing Magistrate during the enquiry and before the order of commitment.

If such Court considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

34. If any Magistrate, not being empowered by law in that behalf, does any of the following things, his proceedings shall be void; that is to say:—

Irregularities which render proceedings void.

- (1) If he passes a sentence on proceedings recorded by another Magistrate,
- (2) If he entertains a case without complaint,
- (3) If he attaches and sells property under section 172,
- (4) If he tries an offender summarily,
- (5) If he decides an appeal,
- (6) If he calls for proceedings,
- (7) If he issues a search-warrant for a letter in the Post Office,
- (8) If he revises a bail order,
- (9) If he calls suspicious or stolen property under section 417,
- (10) If he demands security to keep the peace,
- (11) If he discharges recognizances to keep the peace,
- (12) If he demands security for good behaviour,
- (13) If he discharges a person lawfully bound to be of good behaviour,
- (14) If he makes an order in a local nuisance case,
- (15) If he issues an order to prevent an obstruction,
- (16) If he prohibits the repetition of a nuisance,
- (17) If he makes an order in a possession case, or
- (18) If he makes an order for maintenance.

THE MAGISTRATE OF THE DISTRICT.

35. In every district there shall be a Magistrate of the first class appointed by the Local Government who shall be called the Magistrate of the District and shall exercise throughout his district all the powers of a Magistrate.

Magistrate of the District.

36. In the territories subject to the Lieutenant-Governor of the Panjâb and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate. Such Sessions Judge may either confirm, modify or annul any sentence referred for confirmation.

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Powers with which Deputy Commissioners and chief executive officers of District may be invested.

SUBORDINATE MAGISTRATES.

37. The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third class in the District.

Subordinate Magistrates.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District nor the Subordinate Magistrates shall be subordinate to the Sessions Judge except to the extent and in the manner provided by this Act.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

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38. The Local Government, may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District and may by such notification from time to time alter such local limits.

Power to determine local jurisdiction of a Magistrate of District.

39. The Local Government may divide any district into divisions, and from time to time alter their limits. All existing divisions of districts which are now usually put under the charge of a Magistrate shall be divisions until their limits are so altered.

Division of Districts into divisions.

Existing divisions preserved.

40. The Local Government may place any Magistrate of the 1st or 2nd class in charge of a division of a district.

Local Government may put Magistrate in charge of division.

Such Magistrate shall be called a Magistrate of a Division of a District and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

Delegation of power to Magistrate of District.

41. Every Magistrate in a Division of a District shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

Subordination of officers to Magistrate of Division of District.

42. The Local Government may confer upon any person all or any of the powers of a Magistrate of the 1st, 2nd, or 3rd class, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Special Magistrates.

Such Magistrates shall be called "Special Magistrates."

43. In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

44. The Magistrate of the District, or any Magistrate of a Division of a District, may make over any criminal case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

Transfer of criminal cases to Subordinate Magistrate.

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The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act; but if he does not so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, re-transfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself; or refer it to any officer, subordinate to him, having jurisdiction; or he may commit the accused person for trial.

Procedure of Magistrate in cases beyond his jurisdiction.

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In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate, before whom the case was originally brought, shall be admissible as evidence in all subsequent proceedings.

46. Whenever a Magistrate of the 2nd or 3rd class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding and, if sentence has not been passed, may submit his proceedings, and forward the accused person to the Magistrate of the District, or to the Magistrate of the Division of the District, to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate, to whom the proceedings are submitted, may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case; and may summon any further witnesses and take their evidence; and shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law: Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

Magistrate may, in the first instance, commit accused for trial before Court of Session.

47. Magistrates of Districts and Magistrates of Divisions of Districts may respectively withdraw any criminal case from any Magistrate subordinate to them, and may inquire into or try the case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrate may withdraw or refer cases.

Magistrates of Districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of Magistrates of the 2nd and 3rd classes, and may refer criminal appeals to any competent Magistrate subordinate to them.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to him, whether in charge of divisions of districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

Local Government may empower Magistrates of Districts to withdraw classes of cases.

49. The Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders: Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

Local Government may authorize Magistrate of District to distribute business by localities.

MAGISTRATES' BENCHES.

50. The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the 1st, 2nd or 3rd class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

Power to invest Magistrates sitting as a Bench with certain powers.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Powers exercisable by such bench in absence of special directions.

52. The Magistrate of the District may, subject to the general orders of the Local Government, make rules for the guidance of Magistrates' benches in his district.

Magistrate of the District may frame rules for guidance of benches.

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Such rules shall not be inconsistent with the provisions of this Act and may deal with the following subjects:—

The classes of cases to be tried.

The times and places of sitting.

The constitution of the bench for conducting trials.

The mode of settling differences of opinion which may arise between the Magistrates in Session.

53. The Magistrate of the District may, subject to the like orders, vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

Magistrate of District may vary or annul rules made under section 52.

CONTINUANCE AND ALTERATION OF POWERS.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers may be varied or cancelled.

55. When, in consequence of the office of a Magistrate of the District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers, under this Act or any enactment hereby repealed, in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

Continuance of powers of officers transferred.

CHAPTER V.

OF PUBLIC PROSECUTORS.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

Appointment of public prosecutor.

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

Appointment may be for particular case or generally.

59. Any Court inquiring into or trying any case may permit any person to conduct the case as prosecutor; but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

Private persons may not act as prosecutors or employ counsel without permission of the Court.

60. The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry, trial, or appeal; and if any private person instructs any barrister, attorney, pleader, or vakíl to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

He may plead in all Courts in cases under his charge.

Barristers, &c., privately instructed to be under his direction.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge; and upon such withdrawal, if it is made whilst the case is under inquiry, the accused person shall be discharged. If it is made when he is under trial, the accused person shall be acquitted.

Effect of withdrawal of charge by public prosecutor.

62. If an appeal is brought in any case in which any person, prosecuted by the public prosecutor, has been convicted, notice of such appeal and a copy of the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the court shall also give him due notice of the time and place at which such appeal is to be heard.

Notice to public prosecutor of appeal in cases prosecuted by him.

CHAPTER VI.

THE PLACE OF INQUIRY AND TRIAL.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Place for inquiry and trial of offence.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division, in which the district to which they are appointed is situated; but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

EXPLANATION.—Offences created by local and special laws may be inquired into and tried in any place where the inquiry or trial might be held under the provisions of those laws or of this Code.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal Court, subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction,

High Court may transfer case or direct trial in district other than that in which offence was committed.

or may order that any offence shall be inquired into or tried in any district or division of a district, other than that in which the offence has been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

Provided that the orders issued under this section shall not be repugnant to orders issued by the Local Government under the last preceding section.

65. When a person is accused of the commission of any offence by reason of anything which has been done, or of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be

Accused triable in district where act is done, or where consequence ensues.

inquired into or tried in any district in which any such thing has been done, or omitted to be done, or any such consequence has ensued.

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Illustrations.

(a.) A is wounded in the district of X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(b.) A is wounded in the district of X and is, during twenty days, unable to follow his ordinary pursuits in the district Y, where he is being treated. The offence of causing grievous hurt to A may be inquired into and tried either in X or Y.

(c.) A is put in fear of injury in district X, and is thereby induced, in the district of Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in district X or district Y.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be inquired into and tried either in the district in which it happened or in the district in which the offence, with which it was so connected, happened.

Place for trial where act is offence by reason of relation to other offence.

Illustrations.

(a.) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongfully concealing or in the district in which the kidnapping took place.

(d.) A, B, C, and others combine together to abet the waging of war against the Queen. Any of the conspirators may be tried in any district in which acts were done by any one of the persons with whom he or they conspired in pursuance of the original concerted plan and with reference to the common object.

Place for inquiry or trial where scene of offence is uncertain;

or not in one district only,

67. When it is uncertain in which of several districts an offence was committed; or where an offence is committed partly in one district and partly in another; or

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where the offence is a continuing one and continues to be committed in more districts than one; or where it consists of several acts done in different districts,

it may be inquired into and tried in any one of any of such districts.

Illustrations.

(a.) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.

(b.) An offence committed near the boundary between two districts may be inquired into and tried in either.

(c.) A charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(d.) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(e.) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property, which is the subject of the offence, was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

(f.) A steals a buffalo from B in district W, and personally or by his agents conveys the buffalo through districts X and Y into district Z. This is a continuing offence, and A may be tried either in W, X, Y or Z.

68. The offence of murder as a thug, dacoity or dacoity with murder may be inquired into and tried wherever the person accused may happen to be when arrested, or in any other district in which he might be tried under any other provision of this Code, or any other law relating to the trial of such offence.

Murder as a thug, dacoity or dacoity with murder.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court, within whose jurisdiction the offender is apprehended, may decide in which district the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry shall take place.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or Sessions division, unless it is proved or appears that the accused person was actually prejudiced in his defence, or the prosecutor in his prosecution, by such error, in either of which cases a new trial may be ordered.

Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

CHAPTER VII.

OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

“European British subjects.” 71. The expression “European British subjects” means in this Act—

(1.) 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 Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildfren of any such person by legitimate descent.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the 1st class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the 1st class.

73. Any Magistrate who is authorized by law to entertain complaints, may entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

Who may hear complaints and issue process. If he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence,

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such process must be returnable before a Magistrate competent to inquire into or try the case.

Magistrates of the 1st class, being European British subjects, and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

If the offence complained of is a Magistrate's case and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence; and, on conviction, may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine, up to one thousand rupees, or both.

When such Magistrate may try, and extent of his jurisdiction.

75. When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

When commitment is to be to Court of Session.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

When commitment is to be to High Court.

76. Sessions Judges or Additional Sessions Judges, and, when specially empowered in that behalf by the Local Government, Assistant Sessions Judges who are European British subjects and who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any sentence, warranted by law, not exceeding one year's imprisonment, or fine or both.

Jurisdiction of Court of Session.

If at any stage of the proceedings, the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over the complainant and witnesses to appear before such High Court.

When Sessions Judge finds his powers inadequate.

77. If the Sessions Judge of the Sessions division, within which the offence is ordinarily triable, is not a European British subject, the case shall be reported, by the committing Magistrate, for the orders of the High Court.

Procedure when Sessions Judge is not a European British subject.

78. Trials of European British subjects before the Court of Session shall be conducted according to the provisions of chapter XIX.

Mode of conducting trials by Court of Session.

In trials with assessors not less than half the number of assessors, and in trials by jury not less than half the number of jurors shall be European British subjects.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court.

Appeal from conviction of such subject by Magistrate.

80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court.

Appeal from conviction by Court of Session.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court, which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High Court to abide such further order as may be made by it. The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

Procedure on such application.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such places as the Governor-General in Council may direct. and

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82. Neither the High Courts nor any Judge of such High Courts shall issue any writ of *habeas corpus*, mainprise, *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

Power of High Courts as to issue of writs.

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall on such statement decide whether he is or is not a European British subject, and shall deal with him accordingly; and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

Procedure on claim of European British subject to be dealt with as such.

84. If a European British subject does not claim to be dealt with as such before the Magistrate, before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

Failure to plead status a waiver.

If the Magistrate has reason to believe that any person brought before him is a European British subject, it is his duty to ask him whether he is one or not.

85. If a person, who is not a European British subject, is dealt with as such and does not object, the proceedings shall be valid.

Trial of person not a European British subject under this chapter.

86. All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrate outside the Presidency towns; and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

Procedure of High Courts.

The High Courts shall have the same powers with respect to inquiries and charges against European British subjects

as Courts of Session have with respect to inquiries and charges against other persons.

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87. All Magistrates and Courts of Session, proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace; and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

88. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.

PART III.

OF THE POLICE.

CHAPTER VIII.

OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

89. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine, or four hundred and

All persons to give information of certain offences.

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sixty of the Indian Penal Code, shall in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

90. Every Village Headman, Village Watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(a) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(b) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(c) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(d) the occurrence of any sudden or unnatural death.

91. Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace, or in the suppression of a riot or an affray, or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

All persons to assist Magistrate and Police in certain cases.

CHAPTER IX.

OF ARREST WITHOUT WARRANT.

When Police may arrest without warrant.

92. A Police officer may, without orders from a Magistrate and without a warrant, arrest,—

FIRSTLY,—Any person who in the sight of such Police officer commits a cognizable offence.

SECONDLY,—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

THIRDLY,—Any person against whom a hue and cry has been raised of his having been concerned in any offence.

FOURTHLY,—Any person who has been proclaimed either under this Act, or in a District or Police Gazette or notification.

FIFTHLY,—Any person found with property in his possession which may reasonably be suspected to be stolen property.

SIXTHLY,—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

SEVENTHLY,—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

93. Any person known to have committed or suspected of having committed an offence for which a Police officer is not authorized to arrest without a warrant, and who refuses on demand of a Police officer to give his name and residence, or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person; and shall, within twenty-four hours, be forwarded to the Magistrate having jurisdiction, unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released.

94. An officer in charge of a Police-station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person, found lurking within the limits of such station, who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

or any person who is a reputed robber, house-breaker, thief, receiver of stolen property knowing it to be stolen, or who is of notoriously bad livelihood.

Person charged refusing to give his name and residence.

Arrest of vagabonds.

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95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

96. Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

97. A Police officer, knowing of a design to commit any such offence, may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property, moveable or immoveable,

or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation. If necessary such Police officer may detain the person doing such injury according to the provisions of section ninety-three.

99. If there is reason to believe that any person, liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person, residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

100. If ingress to such house or place cannot be obtained under section ninety-nine the Police officer, authorized to make the arrest, shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any Magistrate having jurisdiction.

If a warrant cannot be obtained without affording such person an opportunity of escape, and there is no person authorized to

enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

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Person arrested to be taken before Magistrate or officer in charge of Police-station.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

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

Procedure when Police officer deposes subordinate to arrest without warrant.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (both inclusive) shall apply to every order in writing issued under this section.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of the local jurisdiction of another Police officer, whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

Police may pursue offenders into other jurisdictions.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a complaint made, may be detained by such Court for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

Detention of offenders attending Court.

When the detention takes place in the course of an inquiry under chapter XV, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

OF ARREST BY PRIVATE PERSONS.

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105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest seamen or apprentices duly engaged, under the Statute 17 & 18 Vic., c. 104, or other law for the time being in force relating to merchant shipping, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall be made only at the request and on the responsibility of such master or mate, and he shall be required by the Police to accompany the arrested person, should he be apprehended, before the Magistrate having jurisdiction; and it shall be the duty of such master or mate to obey such requisition.

107. A private person making an arrest under this chapter shall forthwith make over the person arrested to a Police officer; and, in the absence of a Police officer, shall take such person to the nearest Police-station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

CHAPTER X.

POWERS OF THE POLICE TO INVESTIGATE.

109. An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police.

What offences Police officer may investigate.

110. A Police officer may not, without the order of a Magistrate of the first or second class, investigate an offence not cognizable by the Police.

What offences Police may not investigate.

A Magistrate of the first or second class may, as provided in sections twenty-four and twenty-six, order the Police to investigate; and, on receipt of an order to investigate a non-cognizable case, a Police officer may exercise the same powers in respect of the investigation as in a cognizable case.

111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

Saving of powers vested in Police by special or local law.

112. Every complaint, preferred to an officer in charge of a Police-station, shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

Complaint to Police to be in writing.

113. If a complaint is preferred to an officer in charge of a Police-station of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

Complaint in non-cognizable cases.

114. If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission, within his local jurisdiction, of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.

Police officers shall investigate offences committed within the local limits of their jurisdiction; but they may investigate

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offences committed outside of those limits in cases in which a Magistrate might, under the provisions of chapter V, inquire into an offence not committed within his district.

No such proceeding shall, at any stage, be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

116. Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

117. Provided that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction.

Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and shall, after recording such instructions, transmit the papers without delay to the station having jurisdiction.

118. An officer in charge of a Police-station, when making an investigation, shall, in writing, require the officer or other person, being within the limits of the station or adjoining station, who, from the statement of the complainant before

Where local investigation dispensed with.

Where Police officer in charge sees no sufficient ground for investigation.

Police officer's power to summon witnesses.

otherwise, appears to be acquainted with the circumstances of any case which such officer is investigating; and such person shall attend as required and shall answer all questions relating to such case put to him by such officer :

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Provided that no person shall be bound to answer any questions tending to criminate himself.

119. An officer in charge of a Police-station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Oral examination of witnesses by Police.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

Proviso.

120. No Police officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession, whether such person is under arrest or not.

No inducement to be offered to confess.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

121. No Police officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Police not to record statement or confession.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance, or from giving evidence of any dying declaration.

Proviso.

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122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in sections three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is inquired into or tried. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect:--

“ I believe that this confession was voluntarily made.”

(Signed) A. B.,
Magistrate.

123. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction, and shall bind over the complainants, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him; or he may do so without such requisition; and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate,

Accused not to be detained by Police more than twenty-four hours without special authority.

whether having jurisdiction to inquire into or try the case or not, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

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If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a division of a District, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

125. If it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of an accused person to

Procedure of Police
in case of deficient evi-
dence.

the Magistrate, such officer shall release the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in section one hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

126. A Police officer, making an investigation under this chapter, shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his investigation, the place or places visited by him, and statement of the circumstances ascertained by his investigation.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the prisoner nor his agents shall be entitled to call for them, nor shall he or they

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be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer, who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case, and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

128. A person accused of any non-bailable offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction in respect of the offence.

129. The bail to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

130. Every complainant and other person acquainted with the facts and circumstances of the case, whose attendance before the Magistrate having jurisdiction is deemed necessary by the Police officer making the investigation, shall execute a recognizance in the Form (F) given in the second schedule hereto or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a Division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he has been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to the Magistrate having jurisdiction.

No Police officer shall, except as provided in the next following section, accompany the complainant or witnesses on his or their way to the Court of the Magistrate.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any security for his appearance other than his own recognizance.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police-station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing is completed.

Complainants and witnesses to execute recognizances to appear.

Complainants and witnesses not to be subjected to restraint.

Recusant complainant or witness may be forwarded in custody.

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132. Officers in charge of Police-stations shall report to the Magistrate of the District, or the Magistrate of the division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

133. The officer in charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of the division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate duly authorized.

134. An officer in charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

If the facts do not disclose a cognizable offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

135. The nearest Magistrate, duly authorized, may hold an inquiry into the cause of any such death, either instead of or in addition to the investigation held by the Police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or of his illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

137. Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of Police-stations within the limits of such stations.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police, subject to the control of such District Superintendent of Police; or, in the absence of the District Superintendent of Police and the

Power to summon persons.

Inquiry into cause of such death by nearest Magistrate.

Substitute for officer in charge of Police-station during his absence or illness.

Powers of superior officers of Police.

Assistant District Superintendent of Police may exercise powers of District Superintendent.

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Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.

OF COMPLAINTS TO A MAGISTRATE.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

Processes.
When summons or warrant may be issued. 140. A summons or a warrant may be issued—

(a.) Upon a report by the Police under Chapter X; but if the person complained of is already in custody, no complaint, summons or warrant is necessary.

(b.) Upon information or report by a Police officer as to a non-cognizable offence. Such information or report shall be regarded as a complaint.

(c.) Upon a complaint by a private person. Any person acquainted with the facts of a case may make a complaint.

(d.) Upon suspicion entertained by a Magistrate that an offence has been committed.

Who may entertain complaints. 141. The Magistrate of the District, any Magistrate of a division of a District, or

any Magistrate duly empowered in that behalf, in any case which he is competent to try or to commit for trial,

may entertain a complaint of an offence, whether preferred directly by the complainant, or on report of a Police officer, and may issue process in the manner hereinafter prescribed to compel the appearance of persons accused of such offences.

Effect of reference. Any Magistrate to whom any case is duly referred, by any Magistrate duly empowered to make such reference, may dispose of such case.

A complaint or a Police report gives jurisdiction to a competent Magistrate to inquire into or try any offence covered by the facts complained of or reported, and also to try or commit for trial any person who, at the time when the complaint or report is made, or subsequently, appears to have committed the offence disclosed.

142. The Magistrate of the District, any Magistrate of a division of a District, or any Magistrate duly empowered in that behalf,

in any case in which he is competent to try or to commit for trial,

may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters XIX, XX or XXI of the Indian Penal Code; nor to entertain a complaint, or to take cognizance without complaint, of an offence without sanction, where such offence, by any law in force, may not be entertained without sanction.

143. The Magistrate of the District, any Magistrate of a division of a District, any Magistrate of the 1st class, or, any Magistrate duly empowered in that behalf, may commit any person to the Court of Session for any offence triable by such Court.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint, shall examine the complainant.

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The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Where the complaint has been made by petition, and the Magistrate, neglects to examine the complainant, the trial of the person accused shall not be set aside on this ground.

Effect of irregularity.

Procedure by Magistrate not empowered to hear complaint.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

146. If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

147. The Magistrate before whom such complaint is duly made may, if, after examining the complainant, there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

Dismissal of complaint.

The dismissal of a complaint shall not prevent subsequent proceedings.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the accused person to appear before himself or some other Magistrate having jurisdiction.

Issue of process.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaint.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

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151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons he may, if he sees sufficient cause, dispense with the personal attendance of the accused person and permit him to appear by an agent duly authorized to act in his behalf.

Magistrate may dispense with personal attendance of accused.

But it shall be in the discretion of such Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

CHAPTER XII.

OF THE SUMMONS.

152. Every summons issued by a Magistrate to an accused person shall be in writing, in duplicate, and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

Form of summons.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

Summons by whom served.

154. The summons shall be served on the accused personally in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him; or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned or the person with whom the copy is left shall sign a receipt therefor.

Summons how served.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Service when accused cannot be found.

156. A Magistrate may, notwithstanding the issue of such summons, either before the appearance of the accused person as required by such

Issue of warrant in addition to summons.

summons, or after default made by him so to appear, issue a warrant of arrest against such person.

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157. The Magistrate of the District, a Magistrate of a division of a District, or a Magistrate of the first class duly authorized in that behalf and having local jurisdiction in such District or division of a District, may issue a summons or warrant for the apprehension of any person within such District or division of a District, in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the local jurisdiction of such Magistrate, he might issue a summons or warrant.

Summons or warrant for offence committed beyond local jurisdiction.

158. The provisions relating to a summons, its issue and service, contained in this chapter, shall be applicable to every summons issued under this Act, except a summons to serve as a juror or assessor :

Provisions in this chapter as to form, service and issue of summons applicable to all summonses.

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed; and such head shall thereupon cause the summons to be served on the person named therein.

CHAPTER XIII.

OF THE WARRANT.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

Form of warrant.

The warrant issued under this chapter remains in force until the person arrested is brought into the presence of the Magistrate who issued it and so long as he remains before such Magistrate. If the person arrested is to be remanded to custody, an order must be

Effect of warrant of arrest.

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made under section one hundred and ninty-four, or a warrant issued under section three hundred and three.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person, to direct by endorsement on the warrant that, if such person be willing and ready to give bail, in a sum to be fixed by the Magistrate, for his appearance before the Magistrate on a specified day, [which sum and day shall be named in such endorsement] to answer the complaint, the officer to whom the warant is directed shall accept such bail, and shall release from custody the person complained against.

Magistrate may direct bail to be taken.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

Warrants to whom directed.

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person, for whose arrest it was issued, enter on or be in his estate, farm or land under his charge.

Should the person against whom such warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction, unless bail may be and is taken under section one hundred and sixty.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Warrants directed to any person other than a Police officer.

164. A warrant may be directed to several persons, and, when so directed, may be executed by all, or by any one or more of such persons.

Warrant to several persons.

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165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

Warrant directed to Police officers.

166. The Magistrate, by whom a warrant of arrest is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate issuing warrant may superintend its execution.

Any Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

Arrest in presence of Magistrate.

167. A warrant, issued by a Magistrate, shall ordinarily be executed in the district in which it was issued.

Where warrant may be executed.

But if the person against whom the warrant is issued, escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction, either after endorsement by a Magistrate within whose local jurisdiction it is to be executed, or without such endorsement.

Magistrate may issue warrant for execution in places outside his jurisdiction.

If the warrant is to be so endorsed it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken either to a Magistrate or to a Police officer, not below the rank of an officer in charge of a station, in whose local jurisdiction the warrant is to be executed.

169. If a warrant is executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate, who issued the warrant, be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be

Procedure on arrest of person against whom warrant was issued.

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taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

170. A Magistrate or Police officer, to whom a warrant is directed for execution, shall execute the same or cause it to be executed, and any Magistrate, before whom a person is brought under the provisions of section one hundred and sixty-nine, shall, if the person arrested appears to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

or, if the offence be bailable, and the person arrested be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, and the recognizance or bail-bond shall be forwarded to such Magistrate.

In this section the word Magistrate includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

171. If any person accused of an offence, not coming within section one hundred and forty-eight, absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if he thinks, whether after taking evidence or not, that such person absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

Such proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of such Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

172. Such Magistrate may order the attachment of any property, moveable or immoveable, or both belonging to the person so absconding or concealing himself.

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Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate of the District in whose district it is made; and it shall authorize the attachment of any property without the jurisdiction of the Magistrate of the District, when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate having jurisdiction; or by the appointment of a manager and receiver; or by an order prohibiting the payment of rent to the absent person; as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

173. When any person, whose property has come under the disposal of Government under section one hundred and seventy-two, appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Court of Session or High Court trying him for the offence of which he was accused, or if he is not tried in, or committed for trial for that offence to either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

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174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or shall take bail for his appearance before such Magistrate, if the offence, of which such person is suspected, is bailable.

When the Magistrate, who issued the warrant, cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate, in whose jurisdiction the offence is suspected to have been committed, issues his warrant for the arrest of such person; in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence, of which the person arrested is suspected, has been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate of the division of the district in which the offence was committed.

176. A Police officer or other person, executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

177. In making an arrest, the Police officer, or other person executing the warrant, shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

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178. If a person, against whom a warrant of arrest is issued, forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

179. If there is reason to believe that any person, against whom a warrant has been issued, has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

180. The Police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

181. If information be received that a person accused of any offence for which a warrant may issue, is concealed in an apartment in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant

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has been issued, that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

Person arrested to be brought before Magistrate.

184. No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

Inducements to disclosure or confession.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

185. The provisions relating to a warrant and its execution contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.

PRELIMINARY.

186. Every person charged before any Criminal Court with an offence may of right be defended by any barrister or attorney of a High Court or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders.

Right of accused to be defended.

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

If an accused person, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and if such inquiry results in a committal, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court, with a report of the circumstances of the case, and the High Court shall pass thereon such order as to it seems fit.

187. The place in which the Court of a Magistrate is held for the trial of any offence, or for the purpose of conducting an inquiry into any case triable by a Court of Session or High Court, and also every Court of Session and every High Court 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 Magistrate or presiding Judge may, if he thinks fit, order that, during the inquiry into or 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.

188. 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.

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take

Where accused person does not understand the proceedings.

Criminal Courts to be open.

Compounding offences.

Procedure in preliminary inquiries.

Examination of complainant and witnesses for prosecution.

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the evidence of the complainant and of such person as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

191. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent, when his personal attendance is dispensed with and he appears by agent.

Examination to be in presence of accused.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

192. The Magistrate may, at any stage of the proceedings, summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

Power of Magistrate to summon and examine any person.

193. The Magistrate may, from time to time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

Examination of accused.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences which his replies may tend to show he has committed.

194. If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days:

Adjournment of inquiry and remand.

Instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance, with or with-

out a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

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EXPLANATION.—After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand.

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapter XVI, XVII, or XVIII of this Act.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.

196. When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.

197. If such accused person (not being a European British subject)

When accused is to be committed for trial.
When commitment to be to a High Court.

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is accused of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the evidence appears to justify the Magistrate in sending the accused person for trial,

he shall commit such accused person to take his trial before such High Court and not before a Court of Session; and such High Court shall have jurisdiction to try such person.

EXPLANATION.—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

This explanation applies also to section one hundred and ninety-six.

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall, after the evidence has been recorded, make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

A copy of such instrument shall be forwarded with the record of the original inquiry 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 other officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted to the Court of Session.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court; and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

199. As soon as the charge, on which the accused person is to be tried, has been prepared, it shall be read and explained to him; and a copy or translation thereof shall be furnished to him, if he so require.

Copy of charge to be furnished to accused.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he wishes to be summoned to give evidence on his trial before the Court of Session or High Court.

The Magistrate may, if he thinks proper, summon the persons so named to attend and give evidence at the inquiry; and if he does so, the commitment shall not be considered to have been made until such evidence has been taken.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

201. When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate sees fit to give them free of cost.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader, or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.

Nothing in this section shall preclude the Magistrate of the District in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or person to conduct the prosecution.

CHAPTER XVI.

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

203. The following procedure shall be observed in the trial of summons cases.

No formal charge need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded other-

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wise than as notice to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.

No defect in the complaint or summons shall affect the validity of the proceedings unless it appears that the accused person was actually misled by such defect, and in considering whether or not he was so misled the Court shall have regard to the manner in which the accused person conducted his defence.

When notice is defective.

204. If, upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

If the accused person cannot give bail, when required to do so, he shall be committed to custody.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day. Such adjournment shall be made upon such terms as the Magistrate thinks fit.

Non-appearance of complainant.

206. On the appearance of both parties, on the day fixed for the trial, the substance of the complaint shall be stated to the accused person and he shall be asked if he has any cause to show why he should not be convicted.

Substance of complaint to be stated.

If the accused person admit the truth of the complaint, his admission shall be recorded, and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly of

Conviction on admission of truth of complaint.

such offence (coming under this chapter) as he may appear to have committed.

207. If the accused person does not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear the Magistrate may dismiss the complaint.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused in the complaint, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the Civil

Procedure when no such admission is made.

Adjournment.

Compensation in cases of frivolous or vexatious complaints.

Recovery of such compensation.

such offence (coming under this chapter) as he may appear to have committed.

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207. If the accused person does not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

Procedure when no such admission is made.

208. Before or during the hearing of any complaint, the Magistrate may, in order to secure the attendance of witnesses or for any other reason, adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

Adjournment.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear the Magistrate may dismiss the complaint.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

Compensation in cases of frivolous or vexatious complaints.

In such cases, if more persons than one are accused in the complaint, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may be found within the jurisdiction of the Magistrate of the District; and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District, when the order has been endorsed by the Magistrate of the District in which such property is situated, and, if the sum awarded cannot be realized by means of such distress, by imprisonment of the complainant in the Civil

Recovery of such compensation.

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jail, for any time not exceeding thirty days, unless such sum is sooner paid.

210. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

211. If the Magistrate, in any case tried under this chapter, finds the accused person not guilty, he shall record a judgment of acquittal.

Acquittal.

If the accused person is convicted, the Magistrate shall pass sentence upon him

Sentence.

according to law. When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of such accused person's agent, if he has been permitted to appear by agent: or the accused person may be required to attend to hear such sentence.

212. The dismissal of a complaint under this chapter shall operate in like manner as the acquittal of the accused person.

No complaint shall be dismissed under the provisions of this chapter except in so far as it refers to a summons case.

CHAPTER XVII.

OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

Procedure in warrant cases.

213. The following procedure shall be observed by Magistrates in the trial of

warrant cases.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under

Sections 190 to 194 to apply.

this chapter.

215. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

EXPLANATION I.—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

EXPLANATION II.—A discharge is not equivalent to an acquittal and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

Charge to be drawn when offence is apparently proved.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby.

EXPLANATION II.—If the Court of appeal or revision thinks of justice has been occasioned by an omission to charge, it shall order the trial to be recommenced at which the charge should have been drawn up.

The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses thereon, and shall be allowed to recall and cross-examine for the prosecution.

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If the accused person puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

Evidence for the defence.

Acquittal.

220. If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal.

Conviction.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

EXPLANATION.—If a charge is drawn up, the prisoner must either be acquitted or convicted. If no charge is drawn up, there can be no judgment of acquittal or conviction, except in the case provided for in Explanation I to section two hundred and sixteen.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, should be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter when he either cannot or ought not to make the trial to go over to an officer empowered under section thirty-five, and the prisoner under the provisions hereinbefore contained in section 220. If a Magistrate is not empowered to commit he shall refer the case to an officer empowered under section forty-five.

How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

CHAPTER XVIII.

OF SUMMARY TRIALS.

222. The Magistrate of the District may try any offence in a summary way, and may pass sentence on the offender, if the offence is one which may be tried summarily.

What offences may be tried summarily.

offences in a summary way, and may pass sentence on the offender, if the offence is one which may be tried summarily.

as may be lawfully inflicted under section twenty of this Code:—

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(1). Offences referred to in section one hundred and forty-eight of this Code.

(2). Offences relating to weights and measures under sections two hundred and sixty-four, two hundred and sixty-five, and two hundred and sixty-six of the Indian Penal Code.

(3). Hurt, under section three hundred and twenty-three of the Indian Penal Code.

(4). Theft, under section three hundred and seventy-nine of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(5). Theft, under section three hundred and eighty of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(6). Theft, under section three hundred and eighty-one of the Indian Penal Code, where the value of the property stolen does not exceed fifty rupees.

(7). Receiving stolen property, under section four hundred and eleven of the Indian Penal Code.

(8). Mischief, under section four hundred and twenty-seven of the Indian Penal Code.

(9). House-trespass, under section four hundred and forty-eight of the Indian Penal Code.

(10). Criminal intimidation, under sections five hundred and four and five hundred and six of the Indian Penal Code.

(11). Abetment of, or attempt to commit (when such attempt is an offence), any of the foregoing offences.

223. The Local Government may invest any Magistrate of the 1st class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Magistrates with power to try summarily.

224. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the 1st class, with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of Magistrates invested with 1st class magisterial powers.

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225. The Local Government may invest any Bench of Magistrates invested with the powers of a Magistrate of the 2nd or 3rd class with power to try summarily all or any of the following offences:—

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six, and four hundred and forty-seven, of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

226. In trials under this chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

227. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses nor the reasons for passing the judgment, nor draw up a formal charge, but he or they shall enter in a register, to be kept for the purpose, the following particulars:—

- (a) The serial number;
- (b) The date of the commission of the offence;
- (c) The date of the report or complaint;
- (p) The name of the complainant;
- (e) The name, parentage and residence of the accused person;
- (f) The offence complained of or proved;
- (g) The prisoner's plea;
- (h) The finding, and, in the case of a conviction, a brief statement of the reasons therefor;

- (i) The sentence; and
 (j) The date on which the proceedings terminated.

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228. If a Magistrate or Bench of Magistrates, acting under section two hundred and twenty-two, two hundred and twenty-three, or two hundred and twenty-four, passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees;

or if a Bench of Magistrates, acting under section two hundred and twenty-five, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

Such judgment shall be the only record in cases coming within this section.

229. Records made under section two hundred and twenty-seven and judgments recorded under section two hundred and twenty-eight, shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

230. The Local Government may authorize any Bench of Magistrates, empowered to try offences summarily, to prepare the aforesaid record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of such Bench present conducting the proceedings.

Bench of Magistrates may be empowered to employ Clerk.