
CHAPTER XIX.

TRIAL BY COURT OF SESSION.

231. No Court of Session shall take cognizance of any offence, as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf,

Cognizance of offences
by Court of Session.

1872
Act X.

except in the cases referred to in section four hundred and seventy-two.

232. All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

Trials to be by jury or with assessors.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury, in any District, and such Local Government may from time to time revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable with assessors is tried by a jury, the trial shall not on that ground merely be invalid. If an offence triable by a jury is tried with assessors, the trial shall not on that ground merely be invalid, unless objection be taken before the Court records its finding.

234. Criminal trials before the Court of Session in which a European (not being a European British subject) or an American, is the accused person, or one of the accused persons, shall be by jury.

Jury for trial of Europeans or Americans.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans, whether European British subjects or not, or Americans, if such a jury can be procured :

Provided that, in any District in which the Local Government has not ordered that all trials before the Court of Session, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

Election to be tried without jury.

235. In every trial before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader, or by some other officer specially empowered by the Magistrate of the District in that behalf.

Trial before Court of Session to be conducted by Public Prosecutor, Government Pleader.

236. In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular District or to any particular classes of offences in that District, directs.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

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

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

239. When the trial is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as assessors.

240. When the trial is to be by jury, the jury shall be chosen by lot from the persons summoned to act as jurors.

241. In a trial by jury before the Court of Session of a person not being a European or an American, at least one-half of the jury shall, if the accused person desire it, consist of persons who are neither Europeans nor Americans.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans.

1872

Act X.

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

Objection may then be made to such juror by the accused person or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

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

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons; or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

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

(1) any ground of disqualification within section four hundred and five;

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;

(3) being in the employment of any of such persons;

(4) being plaintiff or defendant against any of such persons in any civil suit.

(5) having complained against, or having been accused by any of such person in any criminal prosecution;

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

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

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

1872
Act X.

Foreman of jury.

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

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

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

247. The witnesses shall then be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

Examination of witnesses.

Examination of accused before Magistrate to be evidence.

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

249. When a witness is produced before the Court of Session, or High Court, the evidence given by him before the committing Magistrate may be referred to by the Court if it was duly taken in the presence of the accused person, and the Court may, if it think fit, ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith.

Evidence given at the preliminary inquiry admissible.

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

250. The Court may, from time to time, at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Examination of accused.

1872
ACT X.

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

in a case tried with assessors, record a finding, or in a case tried by a jury, instruct the jury to return a verdict of acquittal.

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

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

252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place, in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with any of the jury or assessors; and they shall, when the view is finished, be immediately conducted back into Court.

254. If, in the course of a trial by jury at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial,

or if any juror absents himself, and it is not possible to enforce his attendance,

a new juror shall be added, or the jury shall be discharged, and a new jury empannelled, and in either case the trial shall commence anew.

1872
Act X.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

Assessor's opinion and charge to jury.

in cases tried with assessors, to ask the assessors their opinion, and shall record it :

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

256. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove; the admissibility of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;

Duty of Judge.

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

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given ;

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

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

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

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

1872
Act X.

(b.) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

257. - It is the duty of the jury—

(1) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

(4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

(Each of these is a question for the jury.)

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

259. If in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other assessor or assessors.