

(2) Such witnesses shall be examined in the presence of the accused, who shall have the right to cross-examine them.

Custody of
accused
pending trial.

149. The Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused by warrant to custody until and during the trial.

Transfer of
cases.

150. If at any time during the inquiry it appears to the Magistrate that the case is one which could without prejudice to the accused be tried by a Court higher than his own though no preliminary inquiry has been held and ought to be so tried, he may stay the proceedings and transfer the case accordingly.

Addresses

151. (1) In preliminary inquiries under this Chapter—

(a) the officer or other person conducting the prosecution need not open his case but may forthwith produce his evidence;

(b) when the evidence for the prosecution has been taken the accused may make such comments thereon as he thinks necessary;

(c) if the accused elects to make his defence before the Magistrate he may after the examination of his witnesses sum up his case.

(2) If the accused addresses the Court in accordance with paragraphs (b) or (c) of subsection (1) the officer or other person conducting the prosecution shall have the right to reply.

Chapter XVIII.

THE CHARGE.

Form of
charge.

152. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Illustrations.

(a) *A* is charged with the murder of *B*. This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Penal Code; that it did not fall within any of the general exceptions of the same Code and that it did not fall within any of the five exceptions to section 300, or that if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(b) *A* is charged, under section 326 of the Penal Code, with voluntarily causing grievous hurt to *B* by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Penal Code, and that the general exceptions did not apply to it.

(c) *A* is accused of murder, cheating, theft, extortion, criminal intimidation, or using a false property mark. The charge may state that *A* committed murder or cheating or theft or extortion or criminal intimidation or that he used a false property mark without reference to the definitions of those crimes contained in the Penal Code; but the sections under which the offence is punishable must in each instance be referred to in the charge.

(d) *A* is charged under section 184 of the Penal Code with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

153. (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars
as to time,
place and
person.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been

committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 165:

Provided that the time included between the first and last of such dates shall not exceed one year.

When manner of committing offence must be stated.

154. When the nature of the case is such that the particulars mentioned in the last two preceding sections do not give the accused sufficient notice of the matter with which he is charged the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(a) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(c) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(d) *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(e) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(f) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

Sense of words used in charge to describe offence.

155. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

156. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material unless the accused was in fact misled by such error or omission.

Illustrations.

(a) *A* is charged under section 242 of the Penal Code with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit" the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission the error shall not be regarded as material.

(b) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d) *A* is charged with the murder of John Smith on the 6th June, 1947. In fact the murdered person's name was James Smith, and the date of the murder was the 5th June, 1947. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of James Smith. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(e) *A* was charged with murdering James Smith on the 5th June, 1947, and with murdering John Smith (who tried to arrest him for the murder of James Smith) on the 6th June, 1947. When charged with the murder of James Smith he was tried for the murder of John Smith. The witnesses present in his defence were witnesses in the case of James Smith. The Court may infer from this that *A* was misled and that the error was material.

157. When any person is arraigned for trial on an imperfect or erroneous charge the Court may frame a charge, or add to or otherwise alter the charge as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment on imperfect charge.

Illustrations.

(a) *A* is charged with the murder of *C*. A charge of abetting the murder of *C* may be added or substituted.

(b) *A* is charged with forging a valuable security under section 467 of the Penal Code. A charge of fabricating false evidence under section 193 of the same Code may be added.

(c) A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Penal Code cannot be added.

Court may alter or add to charge.

158. (1) Any Court may alter or add to any charge at any time before judgment is pronounced or, in the case of trials with the aid of assessors, before the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

When trial may proceed immediately after alteration or addition.

159. If a charge is framed or an alteration or addition is made under either of the last two preceding sections, the Court shall forthwith call upon the accused to plead thereto and to state whether he is ready to be tried on such charge or altered or added charge. If the accused declares that he is not ready, the Court shall duly consider the reasons he may give and if proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecution in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered or added charge had been the original charge.

When new trial may be directed or trial suspended.

160. If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge requires previous sanction.

161. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

162. Whenever a charge is altered or added by the Court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or re-summon and

examine, with reference to such alteration or addition, any witness who may have been examined, and may also call any further evidence which may be material.

163. (1) If any appellate Court is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error or alteration in the charge, it may direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Effect of material error.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence, under section 196 of the Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that *A* had such knowledge and that he was misled in his defence by the omission from the charge of the statement that he had it, it may direct a new trial upon an amended charge, but, if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

164. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 165, 166, 167 and 171.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and causing grievous hurt.

165. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with and tried at one trial for any number of them not exceeding three.

Three offences of same kind within twelve months may be charged together.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code, or of any other law for the time being in force.

Trial for
more than
one offence,
etc.

166. (1) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts.

(4) Nothing contained in this section shall affect section 71 of the Penal Code.

Illustrations.

To subsection (1)—

(a) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be charged with and tried for offences under sections 225 and 333 of the Penal Code.

(b) *A* has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Penal Code. *A* may be separately charged with and convicted for the possession of each seal under section 473 of the Penal Code.

(c) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses *B* of having committed an offence, knowing that there is no just or lawful ground for such charge. *A* may be separately charged with and convicted of two offences under section 211 of the Penal Code.

(d) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with and convicted of offences under sections 211 and 194 of the Penal Code.

(e) *A*, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. *A* may be separately charged with and convicted of offences under sections 145, 325 and 152 of the Penal Code.

(f) *A* threatens *B*, *C* and *D* at the same time with injury to their persons, with intent to cause alarm to them. *A* may be separately charged with and convicted of each of the three offences under section 506 of the Penal Code.

The separate charges referred to in illustrations (a) to (f) respectively may be tried at the same time.

To subsection (2)—

(g) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with and convicted of offences under sections 352 and 323 of the Penal Code.

(h) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. *A* and *B* may be separately charged with and convicted of offences under sections 411 and 414 of the Penal Code.

(i) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. *A* may be separately charged with and convicted of offences under sections 317 and 304 of the Penal Code.

(j) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Penal Code. *A* may be separately charged with and convicted of offences under sections 471 (read with 466) and 196 of the same Code.

To subsection (3)—

(k) *A* commits robbery on *B*, and in doing so voluntarily causes hurt to him. *A* may be separately charged with and convicted of offences under sections 323, 392 and 394 of the Penal Code.

167. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustrations.

(a) *A* is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

(b) *A* states on oath before the committing Magistrate that he saw *B* hit *C* with a club. Before the High Court Judge *A* states on oath that *B* never hit *C*. *A* may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

When a person charged with one offence can be convicted of another.

168. If in the case mentioned in the last preceding section the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be) though he was not charged with such offence.

Person charged with an offence can be convicted of the attempt.

169. When the accused is charged with an offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

When offence proved is included in offence charged.

170. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in subsection (1) of section 132 of this Code when no complaint has been made as required by that subsection.

Illustrations.

(a) *A* is charged, under section 407 of the Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) *A* is charged, under section 325 of the Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

171. When more persons than one are accused of the same offence or of different offences committed in the same transaction, or when one person is accused of committing an offence and another of abetment of or attempt to commit the same offence, they may be charged and tried together or separately as the Court thinks fit, and the provisions contained in the former part of this Chapter shall apply to all such charges.

When persons may be charged jointly.

Illustrations.

(a) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(b) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge both of them with the robbery and *A* alone with murder.

(c) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge charging both with the one theft and *B* alone with the two other thefts.

(d) *A* and *B*, being members of opposing factions in a riot, should be charged and tried separately.

(e) *A* and *B* are accused of giving false evidence in the same proceeding. They should be charged and tried separately.

172. (1) When more charges than one are made against the same person and when a conviction has been had on

Withdrawal of remaining charges on

conviction
on one of
several
charges.

one or more of them, the officer or other person conducting the prosecution may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into or trial of such charge or charges.

(2) Such withdrawal or stay shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn or not proceeded with.

Form of
charges.

173. All charges upon which persons are tried in the State before the High Court shall be brought in the name of the Public Prosecutor, and be as nearly as possible in accordance with the forms in the Second Schedule.

Chapter XIX.

TRIALS WITHOUT THE AID OF ASSESSORS.

Procedure.

174. So far as practicable the procedure laid down in this Chapter shall be observed by all Courts in trials under this Code without the aid of assessors.

Charge to be
read and
explained.

175. (1) When the accused appears or is brought before the Court a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried.

Conviction
on plea of
guilty.

(2) If the accused pleads guilty to a charge whether as originally framed or as amended under section 178 the plea shall be recorded as nearly as possible in the words used by him and he may be convicted thereon:

Provided that before a plea of guilty is recorded the Court may hear the complainant and such other evidence as it considers necessary and shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him.

176. (1) If the accused refuses to plead or does not plead or claims to be tried, the Court shall proceed to hear the complainant (if any) and to take all such evidence as may be produced in support of the prosecution and such further evidence (if any) as it may of its own motion cause to be produced.

Procedure when no admission is made.

(2) When the Court thinks it necessary it shall obtain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before itself such of them as it thinks necessary.

(3) The accused shall be allowed to cross-examine the complainant and all the witnesses for the prosecution and the complainant or officer or other person conducting the prosecution may, if necessary, re-examine them.

(4) The Court may on behalf of the accused or prosecution or of its own motion put such questions to the witnesses as it considers necessary.

177. (1) If upon taking all the evidence referred to in section 176 and making such examination (if any) of the accused under section 220 as the Court considers necessary it finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Court may, subject to the provisions of section 186, record an order of acquittal.

When no prima facie case.

(2) Nothing in subsection (1) of this section shall be deemed to prevent the Court from discharging the accused at any previous stage of the case if, for reasons to be recorded by the Court, it considers that the charge is groundless.

178. (1) If, when such evidence has been taken and the Court has, if it thinks fit, examined the accused under section 220 of this Code for the purpose of enabling him to explain any circumstance appearing in the evidence against him, and the Court is of opinion that there are grounds for presuming that the accused has committed the offence charged or some other offence, which such Court is competent to try and which in its opinion it ought to try,

When prima facie case.

it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, it shall amend the same.

(2) The charge if amended shall be read and explained to the accused and he shall be again asked whether he is guilty or has any defence to make.

Defence.

179. (1) If the accused does not plead guilty to the charge as amended or if no amendment is made the accused shall then be called upon to enter upon his defence and to produce his evidence, and the Court shall explain to the accused the provisions of section 221 of this Code, or may proceed in accordance with the provisions of section 160.

(2) If the accused elects to give evidence, his evidence shall ordinarily be taken before that of other witnesses for the defence.

(3) The complainant or officer or other person conducting the prosecution shall be allowed to cross-examine all the witnesses for the defence, and the accused may, if necessary, re-examine them.

(4) At any time when he is making his defence the accused may be allowed to call and cross-examine any witnesses present in Court or its precincts.

(5) If the accused puts in any written statement the Court shall file it with the record.

(6) An accused person who elects to give evidence may be cross-examined on behalf of any other accused person.

**Summoning
witnesses.**

180. (1) If the accused applies to the Court to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purpose of examination or cross-examination or the production of any document or other thing, the Court shall issue such process unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by it in writing.

(2) The Court may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in Court, or may act under the provisions of section 383.

(3) The Court may at any time adjourn the hearing of a case if satisfied that this course is in the interests of justice.

181. (1) If the Court finds the accused not guilty the Court shall record an order of acquittal.

Acquittal,
and sentence
on conviction.

(2) If the Court finds the accused guilty or a plea of guilty is recorded against him it shall pass sentence according to law.

182. When the proceedings have been instituted upon the complaint of some person upon oath under section 131 and upon any day fixed for the hearing of the case the complainant is absent and the offence may lawfully be compounded, the Court may, in its discretion, notwithstanding anything hereinbefore contained, discharge the accused at any time before calling on him to enter upon his defence.

Non-
appearance
of
complainant.

183. If in a summons case the accused does not appear at the time and place mentioned in the summons and it appears to the Court that the summons was duly served a reasonable time before the time appointed for appearing and no sufficient ground is shown for an adjournment the Court may either proceed *ex parte* to hear and determine the complaint or may adjourn the hearing to a future day.

Non-
appearance
of accused.

184. In trials under this Chapter—

Addresses.

(a) the officer or other person conducting the prosecution may open the case by stating shortly the nature of the offence charged and the evidence by which he proposes to prove the guilt of the accused or he may forthwith produce his evidence;

(b) when the accused is called upon to enter on his defence, he may before producing his evidence open his case by stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution,

and if the accused gives evidence or witnesses are examined on his behalf he may sum up his case;

(c) the officer or other person conducting the prosecution shall have the right of reply on the whole case whether the accused adduces evidence or not.

Withdrawal
of
prosecution.

186. (1) At any stage of any trial before the delivery of judgment, the officer or other person conducting the prosecution may if he thinks fit inform the Court that he does not propose further to prosecute the accused upon the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the Court or the Court may of its own motion stay the proceedings and if so stayed the accused shall be discharged.

(2) Such discharge shall not amount to an acquittal unless the Court so directs, except in cases coming under section 172.

(3) The Court may require a person discharged under this section to execute a bond, with or without sureties and during such period as the Court may direct, for his re-appearance before the Court on the same charge and in the meantime to keep the peace and be of good behaviour.

Power to
award com-
pensation.

187. (1) If in any case the Court acquits the accused and is of opinion that the complaint, information or charge was frivolous or vexatious it may, in its discretion, either on the application of the accused or of its own motion, order the complainant or the person on whose information the complaint or charge was made to pay to the accused, or to each or any of the accused where there are more than one, such compensation, not exceeding twenty-five dollars, as the Court thinks fit:

Provided that the Court—

(a) shall record and consider any objections which the complainant or informant may urge against the making of the order; and

(b) shall record its reasons for making such order.

(2) The sum so awarded shall be recoverable as if it were a fine; provided that if it cannot be realized the imprisonment awarded in lieu thereof shall not exceed thirty days.

(3) At the time of awarding compensation in any subsequent civil suit relating to the same matter the Court shall take into account any sum paid or recovered as compensation under this subsection upon proof of the same.

188. In proceedings under this Chapter the Court shall keep a record of the particulars of each case, so far as practicable, as follows:—

Particulars
to be
recorded.

(i) The following particulars shall be kept by the Court Writer under the direction of the Judge or Magistrate—

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the complaint, if any;

(d) the name, age, sex, residence and nationality (or race) of the complainant, if any;

(e) the name, age, sex, residence and nationality (or race) of the accused;

(f) the offence of which he is accused, the offence, if any, proved, and the value of the property in respect of which the offence has been committed;

(g) the date of the summons or warrant and of the return day of the summons, if any, or on which the accused was first arrested;

(h) the sentence or other final order.

(ii) The following particulars shall be kept by the Judge or Magistrate:—

(a) the plea of the accused and his examination, if any;

(b) the date when the accused first appeared or was brought before the Court;

(c) the name and title of the officer or other person conducting the prosecution;

(d) the date of each adjournment or postponement and the date to which such adjournment or postponement was made and the grounds of making the same;

(e) the date on which the proceedings terminated;

- (f) the finding;
- (g) the sentence or other final order, including the order, if any, made with regard to any exhibits or property produced in connection with the case;
- (h) the evidence of the witnesses;
- (i) a list of the exhibits;
- (j) when a petition of appeal has been lodged, the grounds of the decision or the judgment if written.

Transfer
of cases.

189. In any trial before a Magistrate in which it appears at any stage of the proceedings that from any cause the case is one which in the opinion of such Magistrate ought to be tried by some Court of higher jurisdiction than his own, or if before or during such trial application is made by or on behalf of the Public Prosecutor, the Magistrate shall stay proceedings and transfer the case to such higher Court or proceed under Chapter XVII with a view to the committal of the accused for trial by the High Court, and shall record such order upon the proceedings.

Chapter XX.

TRIALS BEFORE THE HIGH COURT WITH THE AID OF ASSESSORS.

When
assessors
required.

190. (1) In all cases where the punishment of death is authorized by law the accused shall be tried with the aid of two or more assessors of whom at least half the number shall, if possible, be of the same race as the accused.

(2) The Sultan in Council may by notification in the *Government Gazette* order that the trial of any particular offence or class of offences shall be with the aid of assessors, and may revoke or alter such order.

(3) A Judge may order that any case to be tried before him shall be tried with the aid of assessors.

Procedure
at trial.

191. When the Court is ready to commence the trial it shall proceed in accordance with the provisions of section 175.

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

Where accused does not plead, etc.

193. (1) When a trial is to be held with the aid of assessors, two or more assessors shall be chosen by the Court, and they shall be duly sworn.

Choosing assessors.

(2) The same assessors may try as many accused persons successively as the Court thinks fit.

(3) The officer or other person conducting the prosecution or the accused shall be entitled on cause shown to challenge or object to any assessor.

194. (1) If in the course of a trial with the aid of two assessors, at any time before the finding, either assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor. If both the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Absence of assessors.

(2) Where there are more than two assessors the trial shall proceed provided that a majority of the assessors remain.

195. Subject to the provisions of this Chapter when the assessors have been chosen the trial shall proceed in accordance with the provisions of sections 176, 177, 178, 179, 180, 184, 186, 187, 188 and 189.

Procedure on trial.

196. (1) Whenever the Court thinks that the assessors should view the place in which the offence charged is alleged to have been committed or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect and the assessors shall be conducted 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.

View by assessors.

(2) Such officer shall not, except with the permission of the Court, suffer any person to speak to or hold any communication with any of the assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

(3) The accused shall be present at the view.

When assessor may be examined

197. If an assessor is personally acquainted with any relevant fact he shall inform the Court that such is the case whereupon he may be affirmed, examined, cross-examined and re-examined in the same manner as any other witness.

Assessors to attend adjourned sitting.

198. If a trial is adjourned the assessors shall attend at the adjourned sitting and at every subsequent sitting until the conclusion of the trial.

Conclusion of Trial.

Opinions of assessors.

199. When the case for the defence and the reply (if any) of the officer or other person conducting the prosecution are concluded, the Court may sum up the evidence for the prosecution and defence and shall require each of the assessors to state his opinion orally and shall record such opinion.

Judgment.

200. (1) In a trial with the aid of two assessors if the Court agrees with the opinion of both assessors or, where the assessors are of different opinions or one assessor only remains as provided by section 194 (1), with the opinion of one assessor, the Court shall give judgment accordingly.

(2) Where there are more than two assessors and the Court agrees with the opinion of all the assessors or, where the assessors are of different opinions, with the opinion of at least two assessors, the Court shall give judgment accordingly.

(3) If the accused is acquitted, the Court shall record judgment of acquittal. If the accused is convicted the Court shall pass sentence on him according to law.

Procedure where Court disagrees with assessors.

201. If, where there are two assessors, the Court disagrees with the opinion of both assessors or with the opinion of the remaining assessor as provided by section 194 (1),

or, where there are more than two assessors, when there are not at least two of the assessors who are of the same opinion as the Court on all or any of the charges on which the accused has been tried, the Court shall order a new trial with the aid of fresh assessors.

204. (1) In the trial of cases with assessors it is the duty of the Judge—

Duty of Judge.

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

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

(c) 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;

(d) to decide whether any question which arises is for himself or whether it is a matter upon which the assessors may express an opinion, and upon this point his decision shall bind the assessors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express 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 being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible. It is for the Judge to decide whether the existence of those circumstances has been proved.

(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 assessors.

205. It is the duty of the assessors—

(a) to say which view of the facts is, in their opinion, true, but for the Judge to decide the legal effect of such view;

(b) to state their opinion on all questions which, according to law, are to be deemed questions of fact.

Illustrations.

(a) *A* is tried for the murder of *B*. It is the duty of the Judge to explain to the assessors 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 assessors to give their opinion which view of the facts is true and for the Judge to decide whether on that view of the facts *A* is guilty of murder or of culpable homicide.

(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 assessors.

Chapter XXI.

ASSESSORS.

Who are qualified to serve as assessors.

206. Every male person over the age of twenty-one resident within the State being of sound mind and not afflicted with deafness, blindness or other infirmity incapacitating him from such duties shall be qualified and liable to serve as an assessor within the State.

List may be prepared.

207. The District Officer may direct that a list shall be prepared of suitable persons qualified to act as assessors in his District.

Copies to be exhibited.

208. Such list shall set out the name, nationality (or race), occupation and place of abode of every person therein, and the list or a copy thereof shall be available for inspection in the office of the District Officer.

Objections.

209. Any person desiring to raise any objection to the list may do so in writing to the Resident or District Officer.

Persons liable though not on list.

210. A person qualified and liable to serve as an assessor shall be liable to serve as an assessor notwithstanding that his name is not included on the list.

211. (1) The Court may require the attendance of persons selected as assessors either by the issue of a summons or in some other convenient manner. Attendance of assessors.

(2) The person summoned as an assessor shall be notified as early as possible that his attendance is required.

212. A person summoned as an assessor may, for reasonable cause shown, be exempted from attendance by the Court, on the application of such person made in writing or in person. Exemption from attendance.

213. Every person not being a Government officer summoned to serve and actually serving as an assessor shall be entitled to receive from the public funds such remuneration as the Court may fix. Remuneration to assessors.

214. (1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons or, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after having been made aware that his attendance will be required, shall be liable to the punishment prescribed by section 174 of the Penal Code. Punishment for non-attendance.

(2) Such punishment may be inflicted summarily on an order to that effect by the Court, and any fine imposed shall be recoverable by distress and sale of the movable or immovable property of the person fined by warrant of distress, to be signed by the Registrar of the Court, which warrant shall be issued by the Registrar without further order of the Court if the amount of fine is not paid within seven days of being imposed, if imposed in the presence of the person fined, or within seven days of its having come to his knowledge, by notice or otherwise, that the fine has been imposed, if imposed in his absence:

Provided that it shall be lawful for the Court, if it deem fit, to remit any fine so imposed.

215. When any person is so fined in his absence the Registrar shall forthwith send him written notice of the fact, requiring him to pay the fine, or to show cause before the Court within seven days why he should not pay the same. Person fined to be notified.

Chapter XXII.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Statement
or evidence
of accused.

216. In cases which have been committed for trial to the High Court after a preliminary inquiry, the statement or evidence of the accused recorded by the committing Magistrate under section 143 may be put in and read as evidence.

Court may
put questions
to accused.

220. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may at any stage of a trial or an inquiry, without previously warning the accused, put such questions to him as the Court considers necessary.

(2) For the purpose of this section the accused shall not be sworn or affirmed and he shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them, but the Court may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such trial and put in evidence for or against him in any inquiry into or other trial for any other offence which such answers may tend to show he has committed.

(4) The examination of the accused shall be for the purpose of enabling him to explain any circumstances appearing in evidence against him and shall not be a general examination on whatever suggests itself to the Court.

(5) The discretion given by this section for questioning a prisoner shall not be exercised for the purpose of inducing him to make statements criminatory of himself.

(6) It shall only be exercised for the purpose of ascertaining from a prisoner how he may be able to meet facts disclosed in evidence against him so that those facts may not stand against him unexplained.

(7) Questions shall not be put to the prisoner merely to supplement the case for the prosecution when it is defective.

(8) Whenever the accused is examined under this section the substance of such examination shall be recorded, and such record shall be shown or read to him or shall be

interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(9) When the whole has been made conformable to what the accused declares to be the truth the record shall be signed by the Judge or Magistrate.

221. (1) At every trial or inquiry if and when the Court calls upon the accused for his defence it shall inform and explain to him that he may, if he wishes—

Case for prosecution to be explained by Court to accused.

(a) make an oath or affirmation and give evidence on his own behalf in the witness box upon which he is liable to be cross-examined; or

(b) make a statement from the dock not on oath or affirmation upon which he is not liable to be cross-examined.

(2) If the accused elects to give evidence on oath or affirmation on his own behalf or to make a statement not on oath the Court shall call his attention to the principal points in the evidence of the prosecution which tell against him in order that he may have an opportunity of explaining them.

(3) If the accused elects not to give evidence on oath or affirmation the Court shall ask him, but shall not compel him to answer, whether he wishes to give any reason for not doing so and it shall record as part of the proceedings any reason which he may voluntarily assign.

(4) The fact that the accused does not give evidence on oath or affirmation shall not be made the subject of any adverse comment by the prosecution, but the Court may draw such inference from such refusal as it thinks just.

(5) Nothing in this section shall limit the right of the Court to question the accused under section 220.

222. If the accused, though not insane, cannot be made to understand the proceedings the Court may proceed with the inquiry or trial and, in cases other than cases before the High Court, if such inquiry results in a commitment, 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 make therein such order or pass such sentence as it thinks fit.

Procedure where accused does not understand proceedings.

223. (1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to

Power to postpone or adjourn proceedings.

postpone or adjourn any inquiry or trial the Court may, by order in writing, from time to time, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may, by warrant, remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by the Court of a Magistrate shall be in writing, signed by the presiding Magistrate, and shall state the reasons therefor.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for remand.

(3) Whenever a Judge or Magistrate is not available to constitute a Court of requisite jurisdiction any Magistrate may, by order in writing, notwithstanding that he has no jurisdiction in the case, if the circumstances render it necessary so to do, from time to time postpone or adjourn the trial and may remand the accused either in custody or on bail until a Judge or Magistrate is available as aforesaid.

(4) Whenever a Magistrate acts under the provisions of subsection (3) of this section, he shall report the fact forthwith to the Judge or Magistrate, as the case may be, having jurisdiction in the case.

Compound-
ing offences.

224. (1) The offences punishable under the sections of the Penal Code described in the first two columns of Part A of the table next following may, when no prosecution for such offence is actually pending, be compounded by the person mentioned in the third column of that table; or when a prosecution for such offence is actually pending, be compounded by such person with the consent of the Court before which the case is pending.

(2) The offences punishable under the sections of the Penal Code described in Part B of the table next following may, with the consent of the Court before which the case is pending, be compounded by the person to whom the hurt has been caused.

(3) When any offence is compoundable under this section the abetment of such offence or an attempt to com-

mit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is not competent to contract any person competent to contract on his behalf may compound such offence.

(5) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(6) No offence under the Penal Code not mentioned in this section shall be compounded.

Table of Offences.

PART A.

Offence.	Section of Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded
Causing hurt	323, 334	The person to whom the hurt is caused
Wrongfully restraining or confining any person	341, 342	The person restrained or confined
Assault or use of criminal force	352, 355, 358	The person assaulted or to whom criminal force is used
Unlawful compulsory labour	374	The person compelled to labour
Mischief when the only loss or damage caused is loss or damage to a private person	426, 427	The person to whom the loss or damage is caused
Criminal trespass	447	} The person in possession of the property trespassed upon
House-trespass	448	
Criminal breach of contract of service	490, 491	The person with whom the offender has contracted
Defamation	500	} The person defamed
Printing or engraving matter knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter	502	
Insult intended to provoke a breach of the peace	504	The person insulted

PART B.

Offence.	Section of Penal Code applicable.
Voluntarily causing grievous hurt	325
Voluntarily causing grievous hurt on sudden provocation ...	335
Causing hurt by an act which endangers life	337
Causing grievous hurt by an act which endangers life ...	338

Change of Magistrate during hearing or inquiry.

226. Whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and recommence the inquiry or trial:

Provided that—

(a) in any trial the accused may, when the second Magistrate commences his proceedings demand that the witnesses or any of them be re-summoned and heard;

(b) the High Court may, whether there be an appeal or not, set aside any conviction had or commitment made on evidence not wholly recorded by the Magistrate before whom the conviction was had or the commitment made, if such Court is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

Detention of offenders attending in Court.

227. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

228. (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view, for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection:

Power to view.

Provided that, in the case of a trial with the aid of assessors, the Judge shall not act under this section unless an order is made under section 196 for a view by the assessors.

(2) The Judge or Magistrate may direct that the accused shall be present, and he shall take evidence at such place or places.

(3) Such memorandum shall form part of the record of the case.

229. No proceeding of any Criminal Court shall be invalid by reason of its happening on a Sunday or public holiday.

Sunday or public holiday.

Chapter XXIII.

THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

230. Except as otherwise expressly provided, all evidence taken under Chapters XVII, XIX, and XX shall be taken in the presence of the accused.

Evidence to be taken in presence of accused.

231. In inquiries and trials under this Code by or before a Magistrate the evidence of the witnesses shall be recorded in the manner provided by this Chapter.

Manner of recording evidence.

232. (1) In summons cases tried before a Magistrate, the Magistrate shall, as the examination of each witness proceeds, make a note of the substance of what such witness deposes, and such note shall be written in English or in romanized Malay by the Magistrate with his own hand in legible handwriting and shall form part of the record.

Record of trial.

(2) In all other trials before a Magistrate and in all inquiries under Chapters XI, XVII and XXX the evidence of each witness shall be taken down in legible handwriting in English or in romanized Malay by the Magistrate and shall form part of the record.

Mode of recording evidence.

233. (1) Evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate may, in his discretion, take down any particular question and answer.

Reading over evidence and correction.

234. (1) The evidence of each witness taken in inquiries under Chapters XI and XVII shall be read over to him in the presence and hearing of the accused and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him the Magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) The evidence so taken down shall be interpreted to the witness, if necessary, in the language in which it was given or in a language which he understands.

(4) When a deposition has been read over to a witness and acknowledged to be correct, the Magistrate shall append to the evidence of the witness the letters ' RA ' and his initials which shall be deemed to be a certificate that the evidence has been read over and, if necessary, interpreted, to the witness in the presence and hearing of the accused and has been admitted by the witness to be correct.

(5) The absence of such a certificate in a deposition shall not be a bar to the deposition being received as evidence in any case in which it is desired to tender the deposition in evidence if it is proved by other evidence that the other requirements of this section were in fact complied with.

Interpretation of evidence to accused.

235. (1) Whenever any evidence is given in a language not understood by the accused, it shall be interpreted to him in open Court in a language which he understands.

(2) When documents are put in for the purpose of formal proof it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

236. A Magistrate recording the evidence of a witness may, at the conclusion of such evidence and at the foot of the notes thereof, record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Remarks as to demeanour of witness.

236A. In all criminal cases before the High Court, the presiding Judge shall take down in writing notes of the evidence adduced.

Judge to take notes of evidence.

Chapter XXIV.

THE JUDGMENT.

237. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court, or the substance of such judgment shall be explained in open Court, either immediately or at some subsequent time of which due notice shall be given to the parties or their legal representatives, and the accused shall, if in custody, be brought up or, if not in custody, shall be required to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or if he is acquitted in either of which cases it may be delivered in the presence of his legal representative.

Mode of delivering judgment.

(2) Every such judgment shall be delivered in Malay or in English, and in some language understood by the accused. It shall contain the point or points for determination, the decision thereon, and the reasons for the decision. If the judgment is in writing it shall be signed by the person delivering it and filed with the record of the proceedings. If the judgment is delivered orally the substance of it shall be reduced to writing and filed with the record.

(3) It shall specify the offence (if any) of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.