

of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the Court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the Court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

Order for
detention.

321. (1) When a special finding under section 320 of the Code is made by any Magistrate's Court it shall report the case for the order of a Judge and shall meanwhile order the accused to be kept in custody in any prison or hospital or in such place and in such manner as the Court shall direct.

(2) If the Judge is satisfied with such special finding he may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody during the pleasure of the Sultan.

(3) If, after such inquiry as he considers necessary, the Judge is not satisfied with such special findings he may make further inquiry or direct that further inquiry be made or order a new trial on the same or on an amended charge with such direction to the Magistrate's Court as he shall think fit.

(4) When a special finding under section 320 of the Code is made by the High Court it shall order the accused person to be confined in a lunatic asylum, prison or other place of safe custody during the pleasure of the Sultan.

Visiting
of prisoners
of unsound
mind.

322. When any person is confined under the provisions of sections 247, 317 or 321 two medical officers shall visit him in order to ascertain his state of mind, once at least in every twelve months, and they shall thereupon make a report to the Resident on the state of mind of such person.

Procedure
when
prisoner of
unsound
mind
reported able
to make
defence.

323. If such person is confined under the provisions of section 317, and such medical officers shall certify that in their opinion such person is capable of making his defence, he shall be taken before the Court at such time as the Court appoints, and the Court, if satisfied thereof, may proceed

with the trial and the certificate of such medical officers as aforesaid shall be receivable as evidence.

324. If such person is confined under the provisions of sections 247 or 321 and such medical officers shall certify that in their judgment he may be discharged without danger of his doing injury to himself or to any person, the Resident may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a hospital if he has not been already sent to such a hospital, and in case he orders him to be transferred to a hospital may appoint a commission consisting of a Judge or a Magistrate of the First Class and two medical officers to make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and to report to the Resident, who may order his discharge or detention as he thinks fit.

Procedure when person of unsound mind reported fit for discharge.

325. (1) Whenever any relative or friend of any person confined under the provisions of sections 247, 317 or 321 desires that he shall be delivered over to his care and custody, the Resident, upon the application of such relative or friend and on his giving security to the satisfaction of the Resident, that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may, in his discretion, order such person to be delivered to such relative or friend.

Delivery of person of unsound mind to care of relative.

(2) Whenever such person is so delivered it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Resident directs.

(3) The provisions of sections 322 or 324 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section, and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

Chapter XXXII.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

326. When any Civil or Criminal Court is of opinion that there is ground for inquiring into any offence referred to in section 132 (1) (b), (c), (d) or (f) and committed before

Procedure in certain cases mentioned in section 132.

it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to a Court having jurisdiction and may send the accused in custody, or take sufficient security for his appearance, before such Court, and may bind over any person to appear and give evidence on such inquiry or trial.

Power of Courts in certain offences committed before themselves.

327. The High Court or a Court of a Magistrate of the First Class may charge a person for any offence referred to in section 132 (1) (b), (c), (d) or (f) and committed before it or brought under its notice in the course of a judicial proceeding, and may commit for trial to a Court having jurisdiction or admit to bail and itself try such person upon its own charge.

Summary procedure for offences committed in Court.

328. Where any such offence as is described in sections 175, 178, 179, 180 or 228 of the Penal Code is committed in the view or presence of any Magistrate's Court whether civil or criminal, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day the Court, if it thinks fit, may take cognizance of the offence and sentence the offender to imprisonment for any term not exceeding fourteen days or to a fine not exceeding fifty dollars, and in default of payment to imprisonment for a term which may extend to one month.

Record of facts constituting the offence.

329. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender as well as the finding and sentence.

(2) If the offence is an offence punishable under section 228 of the Penal Code the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Alternative procedure.

330. If the Court, in any case, considers that a person accused of any of the offences referred to in section 328 and committed in its view or presence may be better dealt with by ordinary process of law, such Court, after recording

the facts constituting the offence and the statement of the accused as hereinbefore provided, may direct the accused to be prosecuted and may require security to be given for the appearance of such accused person before a Magistrate or, if sufficient security is not given, may forward such person, under custody, to a Magistrate.

331. When any Court has, under section 328, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court or on apology being made to its satisfaction.

Power to remit punishment.

332. If any witness before a Magistrate's Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment for any term not exceeding fourteen days, unless in the meantime such person consents to be examined and to answer or to produce the document. In the event of his persisting in his refusal he may be dealt with according to the provisions of sections 328 or 330, notwithstanding any sentence he may have undergone under this section.

Refusal to give evidence.

333. (1) Any person sentenced by any lower Court under the provisions of this Chapter may appeal to the Court to which an appeal ordinarily lies.

Appeal.

(2) The provisions of Chapter XXVIII shall, so far as they are applicable, apply to appeals under this section.

(3) The provisions of Chapter XXIX shall also apply to all proceedings by a Magistrate under this Chapter.

Chapter XXXIII.

MAINTENANCE OF WIVES AND CHILDREN.

335. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, a Court of a Magistrate

Order for maintenance of wives and children.

of the First Class may upon due proof of such neglect or refusal order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate not exceeding two hundred dollars in the whole as the Court shall think fit.

(2) Such allowance shall be payable from the date of the order or, if so ordered, from the date of the application for maintenance.

Warrant on neglect to pay.

336. If any person so ordered fails without sufficient cause to comply with any such order, the Magistrate may, for every breach of the order, by warrant, direct the amount due to be levied in the manner by law provided for levying fines imposed by Magistrates, or may sentence him to imprisonment of either description for a term not exceeding one month for each month's allowance remaining unpaid:

Provided that if any person against whom an order has been made for the maintenance of his wife offers to maintain his wife on condition of her living with him, and his wife shall refuse to live with him, it shall be lawful to consider any grounds of refusal stated by such wife, and the Magistrate may make the order aforesaid notwithstanding such offer, if he be satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Wife not entitled when living in adultery.

337. No wife shall be entitled to receive an allowance from her husband under this Chapter, if she is living in adultery, or if without any sufficient reason she refuses to live with her husband, or if they are living separately by consent.

Application for alteration of payments.

338. On the application of any person receiving, or ordered to pay, a monthly allowance under the provisions of section 336 and on proof of a change in the circumstances of such person, his wife, or child, the Magistrate may make such alteration in the allowance ordered as he may think fit.

Evidence to be taken in presence of

339. (1) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be:

Provided that, if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.

husband or father.

(2) The accused may be proceeded against in any district where he resides or is or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

340. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person, and payment shall be enforced by any Magistrate in any district where the person to whom the order is addressed may be found, on production of the copy of the order, and on the Magistrate being satisfied as to the identity of the parties and the non-payment of the sum claimed.

Order enforceable in any district.

340A. Any person aggrieved by any order or refusal of a Court made under this Chapter may appeal to the Court to which an appeal ordinarily lies.

Appeal.

Chapter XXXIV.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

341. The High Court may, whenever it thinks fit, direct—

(i) that any person be set at liberty who—

(a) is detained in any prison within the State on a warrant of extradition; or

(b) is alleged to be illegally or improperly detained in public or private custody within the State;

(ii) that any defendant in custody under a writ of attachment be brought before the Court to be dealt with according to law.

Power of Court to make certain orders.

Form of
application.

342. Every application to bring up before the Court a person detained on a warrant of extradition or alleged to be illegally or improperly detained in custody shall be supported by oral evidence or affidavit stating where and by whom the person is detained and, so far as they are known, the facts relating to such detention with the object of satisfying the Court that there is probable ground for supposing that such person is detained against his will and without just cause.

Warrant.

343. (1) In any case in which the Court shall order a person in custody to be brought before it a warrant in writing shall be prepared and signed by the Judge or Registrar and sealed with the seal of the Court.

(2) Such warrant shall, unless otherwise ordered, be delivered to the applicant who shall cause it to be served personally upon the person to whom it is directed or otherwise as the Court shall direct.

Attendance
of prisoner
in criminal
case.

344. (1) Whenever the presence of any person detained in a prison situate within the State is required in any criminal Court such Court may issue a warrant addressed to the officer in charge of the prison requiring the production of such person before such Court in proper custody at a time and place to be named in such warrant.

(2) The officer in charge of the prison shall cause the person named in such warrant to be brought as directed and shall provide for his safe custody during his absence from prison.

(3) Every such Court may by indorsement on such warrant require the person named therein to be brought up at any time to which the matter wherein such person is required is adjourned.

(4) Every warrant shall be sealed with the seal of the Court and signed by the Judge or Registrar or Magistrate as the case may be.

Appeal.

345. Any person aggrieved by any decision or direction of the Court under this Chapter may appeal to the Court to which an appeal ordinarily lies.

PART IX.

SUPPLEMENTARY PROVISIONS.

Chapter XXXV.

BAIL.

346. When any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an officer in charge of a police station, or upon a warrant upon which there is no indorsement under section 44 that security may be taken for his appearance, or where such person appears or is brought before a Magistrate or a Court, and he is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail by such officer or Magistrate or by the Court, as the case may be:

When person shall be released on bail.

Provided that such officer or Magistrate or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance when required.

347. (1) When any person accused of any non-bailable offence is arrested or detained by an officer in charge of a police station without warrant or upon a warrant upon which there is no indorsement under section 44 that security may be taken for his appearance, a Magistrate or, where the accused person appears or is brought before a Court, the Court may, if he or it thinks fit, release him on bail or, at the discretion of the Magistrate or Court, on his executing a bond without sureties for his appearance when required.

When person accused of non-bailable offence may be released on bail.

(2) The officer in charge of a police district may on his own responsibility release such an accused person on bail or bond unless there appear to be reasonable grounds for believing that he has been guilty of the offence of which he is accused, but if he shall so release him he shall at once report his action to the nearest Magistrate or Court who may confirm or revoke it, or alter, if he or it thinks fit, the conditions on which the accused person is released on bail.

(3) Nothing in this section shall permit any Court other than the High Court to release on bail or bond any person who is charged with an offence punishable with death or imprisonment for fifteen years.

(4) Any Court may at any subsequent stage of any proceedings under this Code cause any person who has been released under this section to be arrested and may commit him to custody.

Amount of bond.

348. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case as being sufficient to secure the attendance of the person arrested, but shall not be excessive; and the Court of Appeal or the High Court may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail or that the bail required by any police officer or Court be reduced or increased.

Bond to be executed.

349. Before any person is released on bail, or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail a bond shall also be executed by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

Person to be released.

350. (1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released and when he is in prison the Court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer, on receipt of the order, shall release him.

(2) Nothing in this section or in sections 346 or 347 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

When warrant of arrest

351. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become

insufficient, the Court admitting him to bail may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

may be issued against person bailed.

352. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Sureties may apply to have bond discharged. Procedure subsequent thereto.

(2) On such application being made the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged, either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to custody.

(4) A surety may at any time arrest the person for whose attendance and appearance he is a surety and forthwith bring him before a Magistrate, who shall thereupon discharge such surety's bond and shall call upon such person to find other sufficient surety, and if he fails to do so shall commit him to custody.

353. Any person aggrieved by any order or refusal of any inferior Court made under this Chapter may appeal to the Court to which an appeal ordinarily lies.

Appeal.

Chapter XXXVI.

PROVISIONS AS TO BONDS.

354. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may permit or require him to deposit a sum of money to such amount as the Court or officer may fix, in lieu of the penalty in such bond.

Deposit instead of bond.

355. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken or,

Procedure on forfeiture of bond.

when the bond is for appearance before a Court, whenever it is proved to the satisfaction of such Court, that such bond has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the property belonging to such person.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it, and it shall authorize the distress and sale of any property belonging to such person without such limits when indorsed by a Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty be not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment for a term which may extend to six months.

(5) The Court may, in its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Appeal.

356. Any person aggrieved by any order of any inferior Court made under this Chapter may appeal to the Court to which an appeal ordinarily lies.

Chapter XXXVII.

THE DISPOSAL OF PROPERTY THE SUBJECT OF OFFENCES.

Order for custody and disposal of property in certain cases.

357. (1) When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to

speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

(2) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(3) When the High Court makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the Magistrate in charge of the District.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of subsection (2) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Explanation : In this section the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

358. In lieu of itself making an order under the last preceding section the Court may direct the property to be delivered to a Magistrate, who shall, in such cases, deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Direction in lieu of order.

359. When any person is convicted of any offence which includes or amounts to theft or receiving stolen property and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen and that any

Payment to innocent person of money found on accused.

money has, on his arrest, been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order.

360. The High Court may direct any order under sections 357 or 359 made by a Magistrate's Court to be stayed pending consideration by the High Court and may modify, alter or annul such order.

Destruction of libellous and other matter.

361. (1) On a conviction under sections 292, 293, 501 or 502 of the Penal Code the Court may order the destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the Court or remain in the possession of the person convicted.

(2) The Court may in like manner, on a conviction under sections 272, 273, 274 or 275 of the Penal Code, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Restoration of possession of immovable property.

362. (1) Whenever a person is convicted of an offence attended by criminal force and it appears to the Court that by such force any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order such property to be restored to the possession of the person who has been dispossessed.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

Procedure by police on seizure of property.

363. (1) The seizure or finding by any police officer of property taken under section 24 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown the Magistrate may detain it, and shall in such case issue a public notification specifying the articles of which such property consists and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such public notification.

(3) Such notification shall, if the value of the property amounts to fifty dollars, be published in the *Government Gazette*.

364. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government and may be sold under the order of a Magistrate.

Procedure where no claim established.

(2) In the case of an order made under this section an appeal shall lie to the Court to which an appeal ordinarily lies.

365. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure or finding is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold, and the provisions of sections 363 and 364 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

Procedure where owner unknown.

365A. No order made under this Chapter of the Code shall come into force until after the expiration of the time prescribed for instituting an appeal or, if an appeal has been instituted, until the dismissal of the appeal, in the proceedings in respect of which such order was made unless the property is subject to speedy or natural decay in which case a Judge or Magistrate may, after recording such evidence as he thinks necessary, order its disposal immediately.

Order suspended pending appeal.

Chapter XXXVIII.

THE TRANSFER OF CRIMINAL CASES.

Power to
transfer
cases.

366. (1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate to it; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code;

the High Court may order that any offence be inquired into or tried by any Court not empowered under sections 124 to 129 (both inclusive) but in other respects competent to inquire into or try such offence, or that any particular criminal case be transferred to and tried before the High Court, or that a person committed for trial in one place be tried in another place.

(2) The High Court may exercise any of its powers under this section either on the report of the lower Court, or on the application of a party interested, or on its own initiative.

Application
for transfer.

367. (1) Every application for the exercise of the power conferred by the last preceding section may be made personally or in writing and when required shall be supported by affidavit.

(2) When an accused person makes an application under this section, the High Court may, if it thinks fit, direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the expenses of the prosecution.

Chapter XXXIX.

IRREGULARITIES IN PROCEEDINGS.

368. No finding, sentence or order of any Criminal Court of competent jurisdiction shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at, passed or made, took place in a wrong local area or before a wrong Magistrate or Court, unless it appears that such error occasioned a failure of justice.

Proceeding
in wrong
place, etc.

369. If any Court before which a confession or other statement of an accused person recorded under sections 119 or 220 is tendered or has been received in evidence finds that any of the provisions of such section have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded and, if it is satisfied of the same, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

Procedure
when con-
fession
irregularly
taken.

370. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Omission to
frame
charge.

(2) If the appellate or revising Court thinks that a failure of justice has been occasioned by the omission to frame a charge it shall order that a charge be framed and that a new trial be held.

371. (1) Subject to the provisions of sections 368, 369 and 370, no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of—

Irregularities
not to vitiate
proceedings.

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial, or in any inquiry or other proceeding under this Code; or

(b) the want of any sanction required by section 132;

or

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(c) the omission to inform an accused person of his rights under section 221; or

(d) the want of qualification of any assessor; or

(e) the improper admission or rejection of any evidence; or

(f) any misdirection in any charge to assessors;

unless such error, omission, improper admission or rejection of evidence, irregularity, want or misdirection has occasioned a failure of justice.

(2) In determining whether any error, omission, or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

Power of
Chief Justice
to dispense
with provi-
sions of
Code.

372. Where owing to the illiteracy or lack of understanding of any person against whom any proceedings under this Code are being taken, or for other valid reason, it is not in the opinion of the Chief Justice reasonably necessary or practicable to carry out any provision of this Code, the Chief Justice may authorize any Court or Magistrate to dispense with such provision, and may direct either generally or in any particular case or class of case that any Court or Magistrate shall, notwithstanding any of the provisions of this Code, proceed in such manner as the Chief Justice shall direct.

Unlawful
distress:
irregularity
no trespass.

373. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto, but all persons aggrieved by such irregularity may recover full satisfaction for the special damage caused thereby in any Court of competent jurisdiction.

Chapter XL.

THE PUBLIC PROSECUTOR.

Public
Prosecutor
and
Deputies.

374. (1) The Public Prosecutor shall have the general direction and control of criminal prosecutions and proceedings under this Code or under any other written law.

(2) The Resident may from time to time appoint fit and proper persons to be Deputy Public Prosecutors who shall be under the general control and direction of the Public Prosecutor and may exercise any or all of the powers of the Public Prosecutor under this Code except as may be delegated to him by the Public Prosecutor.

(3) The Public Prosecutor may by notification in the *Government Gazette* delegate all or any of the powers vested in him by this Code to any Deputy Public Prosecutor and the exercise of these powers by such Deputy Public Prosecutor shall then operate as if they had been exercised by the Public Prosecutor, provided that the Public Prosecutor may in like manner revoke any delegation made by him under this section.

375. (1) Every criminal prosecution and every inquiry shall be conducted—

Conduct of prosecutions.

(a) by the Public Prosecutor or a Deputy Public Prosecutor, or by some person expressly authorized in writing by the Public Prosecutor or the Resident; or

(b) by a police officer; or

(c) by an officer of a Government Department or of any public utility company in matters which concern his Department or company.

(2) In cases where no such officer is available the prosecution shall be conducted as the Public Prosecutor or the Court shall direct.

(3) In non-seizable cases any private person may appear in person to prosecute for an offence against his own person or property.

376. (1) The Public Prosecutor may at any time call for a copy of the report of any police investigation or for a copy of the record of any preliminary inquiry that has been held under Chapter XVII of this Code, or may direct generally that in any specified offence or offences such report or record shall be sent to him, and the officer or Magistrate shall send such report or record accordingly.

Public Prosecutor may call for police report of record of preliminary inquiry.

(2) Notwithstanding that the Public Prosecutor has not called for such report or record, the officer making such

report or the Magistrate holding such inquiry, if he is in doubt whether a charge can properly be made, or what charge ought to be made against the accused, or what evidence or further evidence ought to be taken, may send a copy of the report or record to the Public Prosecutor.

(3) The provisions of subsection (2) of this section shall also apply to any case which is before a Magistrate by way of appeal or the record of which he is examining in the exercise of his powers of revision under section 296 of this Code.

(4) Pending the instructions of the Public Prosecutor the inquiry, trial or further consideration of the case shall be adjourned, unless the Public Prosecutor shall otherwise direct.

Power of
Public
Prosecutor
to enter
nolle
prosequi.

377. (1) In any criminal case and at any stage thereof before judgment, the Public Prosecutor may, either personally or in writing, inform the Court that he intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of such charges as may be specified, and if he has been committed to prison shall be released or, if on bail, his bond and that of his sureties, if any, shall be discharged.

(2) Such discharge shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

When Public
Prosecutor
may direct
Magistrate
to take
further
evidence.

378. (1) If the Public Prosecutor is of opinion that a criminal offence is disclosed and that further proceedings should be taken against the accused but that the evidence already obtained or taken is in any particular or respect defective and is not sufficient to afford a foundation for a full and proper trial, he may by an order in writing signed by himself require the police to make further investigation or require the Magistrate to hold an inquiry or, if an inquiry has been held, to take such further evidence as may be specified or indicated in the order either by way of examining any witnesses who have already given their testimony, or otherwise to continue the inquiry.

(2) Upon the order of the Public Prosecutor being received by the Magistrate he shall cause the accused

person to appear before him and shall hold or shall resume and proceed with the inquiry in pursuance of such order.

(3) If an inquiry or supplemental inquiry is directed to be held the accused person, if at large on bail, shall be called upon by written notice to appear before the Magistrate's Court, and if in prison shall by an order of the Magistrate be brought before the Court on a day appointed therefor.

(4) All the provisions in respect of the original inquiry shall be applicable, so far as may be, to the supplemental inquiry.

(5) The Magistrate shall at the termination of the inquiry or supplemental inquiry forthwith transmit a copy of the record to the Public Prosecutor.

(6) A supplemental inquiry may be continued by a Magistrate other than the Magistrate who conducted the original inquiry.

379. In addition to the powers conferred on him by sections 375, 377 and 378, the Public Prosecutor upon receiving a copy of the report of a police investigation or the record of an inquiry may—

Public Prosecutor may alter charge and give instructions.

(a) frame or alter or re-draw the charge or charges against the accused or frame an additional charge or charges against the accused having regard to the provisions of this Code as to the form of charges; and

(b) give such instructions with regard to the inquiry as he may consider desirable and the Magistrate shall, subject to this Code, carry into effect such instructions and shall conduct the inquiry accordingly.

Chapter XLI.

MISCELLANEOUS.

380. (1) Any affidavit if otherwise admissible may be used in a Criminal Court if it is sworn or affirmed—

Affidavits, before whom sworn.

(a) in the State or in the Colony of Sarawak or the Colony of North Borneo before any Judge, Magistrate,

Notary Public or other person lawfully authorized to administer oaths;

(*b*) in the Colony of Singapore or the Federation of Malaya before any Judge, District Judge, Assistant District Judge, Registrar, or Magistrate or other person lawfully authorized to administer oaths;

(*c*) in the United Kingdom of Great Britain or Ireland or in any place under the dominion, jurisdiction or protection of Her Majesty before any Judge, Magistrate or Notary Public or other person lawfully authorized to administer oaths;

(*d*) in any other place before any Judge or Magistrate or before any of Her Majesty's Consuls or Vice-Consuls.

(2) The Court shall take judicial notice of the seal or signature (as the case may be) of any Judge, Court, Notary Public, Consul, Vice-Consul or other person appended or subscribed to any affidavit.

Power of Court to summon and examine persons.

381. Any Court may at any stage of any inquiry, trial or other proceeding under this Code summon any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Order for payment of costs of prosecution and compensation.

382. (1) When a person is convicted of any crime or offence the Court may, in its discretion, make either or both of the following orders against him in addition to any other punishment, namely—

(*a*) an order for the payment by him of the costs of his prosecution or such part thereof as the Court directs;

(*b*) an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person, or to the representatives of any person, injured in respect of his person, character or property by the crime or offence for which the sentence is passed.

(2) The Court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and payment thereof may be enforced in the same manner as if the amount thereof were a fine, or in such other manner as the law for the time being directs.

(3) The Court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction be given, an order for payment of costs shall have priority over an order for payment of compensation.

(4) An order for payment under this section shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages but the Court shall take into account the amount of compensation paid under the order.

(5) Every order made under this section by a Magistrate shall be appealable to the Court to which an appeal ordinarily lies.

(6) The powers conferred by this section may be exercised on appeal, reference or revision.

383. In every criminal case the Court may in its discretion order payment by Government to the prosecutor and to the witnesses both for the prosecution and for the defence, or to such of them as it thinks fit, of the expenses incurred by them severally in and about attending the Court, and also compensation for their trouble and loss of time, subject to such rules as are prescribed.

Payment of expenses of prosecutors and witnesses.

384. The Resident may make rules as to the rates or scales of payment of the expenses or compensation to be ordered as aforesaid and concerning the form of the certificates hereinafter mentioned and the details to be inserted therein.

Rules as to rates of payment.

385. (1) The Magistrate who commits a case for trial shall certify under his hand in the form above mentioned the amount of expense and compensation allowable to each prosecutor and witness in respect of his attendance before him.

Certificate of Magistrate.

(2) The amount of any other expenses and compensation to the prosecutors and witnesses to whom the High Court orders payment shall be ascertained by the Registrar of the Court.

Reward for unusual exertion.

386. Whenever it appears to any Court that a private person has shown unusual courage, diligence or exertion in the apprehension of a person accused of having committed, attempted to commit or abetted an offence punishable with death or rigorous imprisonment, such Court may order payment to him by Government of any sum not exceeding five hundred dollars.

Compensation for family of person killed in arresting.

387. If any person is killed in endeavouring to arrest or to keep in lawful custody a person accused as aforesaid the Sultan in Council may order payment by Government to the wife, husband, parent or child of the deceased of such sum or sums as appear reasonable in compensation for the loss sustained.

Recovery of money payable under order.

388. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Superior police officer may exercise powers of subordinate officers.

389. Any police officer to whom an officer in charge of a police station is subordinate may exercise the same powers as may be exercised by the officer in charge of the police station and any police officer to whom an officer in charge of a police district is subordinate may exercise the same powers as may be exercised by the officer in charge of the police district.

Power of police to seize property suspected of being stolen.

390. Any member of the Police Force may seize any property which is alleged or may be suspected to have been stolen, or which is found under circumstances which create suspicion that an offence has been committed, and such member, if subordinate to the officer in charge of the nearest police station, shall forthwith report such seizure to such officer.

Person released on bail to give address for service.

391. When any person is released on bail, or on his own bond, he shall give to the Court or officer taking such bail or bond an address at which service upon him of all notices

and process may be made, and in any case where such person cannot be found, or for other reasons such service on him cannot be effected, any notice or process left for such person at such address shall be deemed to have been duly served upon him.

392. Upon complaint made to a Magistrate on oath of the abduction or unlawful detention of a woman or of a female child under the age of fourteen years for any unlawful purpose within the local limits of his jurisdiction, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to compel restoration of abducted persons.

393. (1) Whenever any person causes a police officer to arrest another person if it appears to the Judge or Magistrate who takes cognizance of the case that there was no sufficient ground for causing such arrest the Judge or Magistrate may award such compensation, not exceeding twenty-five dollars, to be paid by the person so causing the arrest to each person so arrested for his loss of time and any expenses incurred by him in the matter as the Judge or Magistrate shall think fit.

Compensation for giving in charge groundlessly.

(2) All compensation awarded under this section may be recovered as if it were a fine.

(3) Such compensation shall be no bar to an action for false imprisonment.

394. No Magistrate shall, except with the permission of the High Court, try or commit for trial any case in which he is a party or personally interested.

Magistrate not to act where interested.

Explanation.—A Magistrate shall not be deemed to be a party or personally interested within the meaning of this section in any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which any transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

395. A public servant, having any duty to perform in connection with the sale of any property under this Code, shall not purchase or bid for the property.

Public servants not to bid at sales under this Code.

When receivers, etc., charged, evidence of other cases allowed.

396. Where proceedings are taken against any person for having received goods knowing them to be stolen or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceedings taken against him.

When evidence of previous conviction may be given.

397. Where proceedings are taken against any person for having received goods knowing them to be stolen or for having in his possession stolen property and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew the property which was proved to be in his possession to have been stolen.

Forms.

398. The forms in the Second Schedule, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned.

Application of fines.

399. Any Court imposing any fines under the authority of any law for the time being in force may award any portion thereof not exceeding half to an informer.

Power to make rules and frame forms.

400. The Chief Justice may from time to time—

(a) make rules for the preparation and transmission of returns and statements to be prepared and submitted by Magistrates' Courts;

(b) frame forms for every proceeding in the said Courts for which he thinks a form should be provided;

(c) amend or alter the forms in the Second Schedule.

THE FIRST SCHEDULE.

TABULAR STATEMENT OF OFFENCES UNDER THE PENAL CODE.

Explanatory Notes.—1. The entries in the Second and Seventh columns of this Schedule, headed respectively "Offence" and "Maximum Punishment under the Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the First column.

2. The entries in the Third column of this Schedule are not intended in any way to restrict the powers of arrest without warrant which may be lawfully exercised by Police Officers.

3. (i) The Eighth column must be read in conjunction with sections 8 and 9 of the Code. All cases under the Penal Code may be tried by the High Court and when a lower Court is mentioned it implies not that the High Court has no jurisdiction but that the lower Court has concurrent jurisdiction with the High Court to try the case. Where the maximum punishment prescribed may be awarded by the lower Court the case should ordinarily be tried by that Court, but where the maximum punishment is greater than that which the lower Court may award it is a matter of discretion which Court should try the case. (See section 189 of the Code.)

(ii) When the offence is shown to be triable by a District Court and also by a lower Court than a District Court, the case should ordinarily be tried by the District Court, but may be tried by the lower Court if the punishment which the lower Court has power to inflict is, in the opinion of that Court, sufficient.

4. In the Seventh column the word "imprisonment," except where otherwise stated, means imprisonment of either description.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Penal Code Section.	Offence.	Whether the police may ordinarily arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Maximum punishment under the Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.

115	Abetment of an offence, punishable with death or with imprisonment for 15 years, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment for 7 years and fine.	Ditto.
115	If an act which causes harm be done in consequence of the abetment.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for 14 years and fine.	Ditto.
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto.	Imprisonment extending to a quarter part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
116	If the abettor or the person abetted be a public servant, whose duty it is to prevent the offence.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment extending to half of the longest term and of any description provided for the offence, or fine, or both.	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for 3 years, or fine, or both.	Ditto.

CHAPTER V.—ABETMENT—*continued.*

1	2	3	4	5	6	7	8
Penal Code Section.	Offence.	Whether the police may ordinarily arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Maximum punishment under the Penal Code.	By what Court triable.
118	Concealing a design to commit an offence punishable with death or imprisonment for 15 years if the offence be committed.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	Not bailable.	According as the offence abetted is compoundable or not.	Imprisonment for 7 years and fine.	The Court by which the offence abetted is triable.
118	If the offence be not committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto.	Imprisonment extending to half of the longest term and of any description provided for the offence, or fine or both.	Ditto.
119	If the offence be punishable with death or imprisonment for 15 years.	Ditto.	Ditto.	Not bailable.	Ditto.	Imprisonment for 10 years.	Ditto.
119	If the offence be not committed.	Ditto.	Ditto.	According as the offence abetted is bailable or not.	Ditto.	Imprisonment extending to a quarter part of the longest term and of any description provided for the offence, or fine, or both.	Ditto.

120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
120	If the offence be not committed.	Ditto.	Ditto.	Ditto.	Ditto.	Imprisonment extending to one eighth part of the longest term and of the description provided for the offence, or fine, or both.

CHAPTER VA.—CRIMINAL CONSPIRACY.

120B	Criminal conspiracy to commit an offence punishable with death or imprisonment for two years or upwards.	May arrest without warrant if offence which is the object of the conspiracy may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence which is the object of the conspiracy.	According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as for the abetment of the offence.	High Court where the offence which is the object of the conspiracy is triable exclusively by such Court. In all other cases High Court or District Court.
	Criminal conspiracy in any other case.	Shall not arrest without warrant.	Summons.	Bailable.	Ditto.	Imprisonment for 6 months or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging war against the Queen or the Sultan.	Shall not arrest without warrant.	Warrant.	Not bailable.	Not compoundable.	Death, or imprisonment for 15 years and fine.	High Court.
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