

Section 164

Any Presidency Magistrate, Magistrate 1st class and Magistrate of the Second class especially empowered may, if he is not a police officer

record any *statement or confession* made to him in the course of an investigation under this chapter.

Statement shall be recorded in a manner prescribed for recording evidence.

Confession is to be recorded in the manner provided for in Section 364.

Provided that the Magistrate, before recording such confession, shall explain to the accused that he is not bound to make it and if he does so it may be used as evidence against him.

No Magistrate shall record, unless he has reason to believe, that it is made voluntarily.

On recording confession, Magistrate shall make a memorandum at the foot showing that he has observed the conditions.

Search*Section 165*

(1) In the course of his investigation, a police officer may find it necessary to make a search in any place.

Such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limits of that station in his charge.

(2) The police officer shall, as far as possible, conduct the search in person.

(3) He may authorize his subordinate after recording reasons in writing and specifying the place and thing to be searched.

(4) The provisions of the Code, as to search warrants and the general provisions as to searches contained in Section 102 and Section 103, shall apply.

(5) Copies of record made during search shall be sent to the nearest Magistrate and the owner or occupier of the place of search shall be given a copy of the record on payment of fees.

Section 166

Police officer can cause search to be made within the area of another police station.

Section 167

If the investigation cannot be completed within 24 hours fixed by Section 61, and *there are grounds for believing that the accusation or information is well founded*, the Police shall forthwith transmit to the nearest Magistrate, a copy of the entries in the diary hereinafter prescribed relating to the case and shall, at the time, forward the accused to such jurisdiction.

(2) The Magistrate shall, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding 15 days.

(3) A Magistrate authorising detention in police custody shall record reasons for so doing.

Section 169

When police officer finds that there is not sufficient evidence or reasonable ground of suspicion to justify forwarding the accused to Magistrate *he shall release him* on his executing a bond with or without sureties *to appear if and when so required*, before a Magistrate empowered to take cognizance.

Section 170

(1) When police officer finds that there is sufficient evidence or reasonable ground, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance.

(2) Along with this, he shall send article necessary to be produced before Magistrate and shall require complainant and witnesses, to execute a bond to appear before Magistrate.

Section 173

The police officer shall send a report giving names of parties, information each is responsible for.

Accused is entitled to a copy of the report.

Exemption of accused from attendance.

Section 205 ; 366 ; 424 ; 6 *All. 59 : 21 Cal. 588*

Section 205.—Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(21) But the Magistrate may call accused at any time.

Section 366.—*Time of Judgement.*

Should be read in the presence of the accused unless it is dispensed with and the sentence is of fine only.

Section 424.—*Judgement by appellate Court.*

Accused need not be called to hear judgement.

II. Of how many offences can the Court take cognizance of at one trial

Joinder of Charges

Sections 233, 234, 235

Section 233.

1. *Every offence shall be tried separately.*

A is accused of theft on one occasion and of causing grievous hurt on another occasion. A must be tried separately for the two offence. He cannot be tried for both at one trial. There are exceptions to this general proposition.

Section 234

Three offences *of the same kind* may be tried at one trial *if they are committed within the space of twelve months*, irrespective of the question whether they are committed against the same person or not.

Offences of the same kind = Offences punishable with the same amount of punishment under the same section of the I. P. C. or of any special or local law.

2. *Must not exceed three.* Joinder of charges of three of fences under section 411 and three offence sunder 414 is bad. Three offences of forgery and three offences of breach of trust bad.

1. <i>Same kind.</i> Adultery and bigamy	not same
Murder and hurt	
Forgery and giving false evidence	

The rule as to kind is subject to two proviso.

(1) Offences under Section 379 (Theft) and under Section 380 (Theft in a dwelling house) shall be deemed to be offences of the same kind even though they are not offences under the same section and the punishment for them is not identical.

(1) The offence and the attempt to commit that offence (Section 511 I. P. C.) shall be deemed to be offences of the same kind even though they are not offences under the same section and the punishment for them is not identical.

Section 235 (2)

When an act constitutes an offence under two or more separate definitions of any law defining or punishing offences the person accused of them may be tried at one trial for each of such offences.

Section 235 (3)

When an act, which by itself constitutes an offence, constitute when combined with another a different offence.

The person accused of them may be tried at one trial for the offences, constituted by such act when combined, and for any offences constituted by the act when taken by itself.

This is so when the act or acts done by the accused constitutes a single offence.

But it may be, that the acts done by the accused constitute more than one offence i.e. show that a plurality of offences have been committed.

Can the accused be tried for all such offences at one trial? Or must he be tried separately for each offence?

The rules as to this will be found in *Section 235 (1)*

If the acts amounting to different offences are committed by the accused in the course of the *same transaction*, then he may be tried at one trial for *every* such offence.

1. *Same transaction*

In deciding whether acts constituting an offence are so connected as to form one and the same transaction, the determining factor is not so much proximity in time as continuity and community of purpose and object.

A mere interval of time between the commission of one offence and another does not by itself import want of continuity, though length of interval may be an important element in determining the question of connection between the two.

2. There is no limit to the number of offences that can be tried together.

III. Of how many offenders can the Court try at one trial

Joinder of Accused

Section 239

The following persons may be charged and tried together :

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind within the meaning of Section 234 *committed by them jointly* within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, or criminal misappropriation,

and

(f) persons accused of receiving or retaining, or assisting in the disposal or concealment of property, the possession of which is alleged to have been transferred by any such offence committed by the first-named persons,

or

persons accused of abetment of or attempting to commit any such last-named offence.

(f) persons accused of offences under sections 411 and 414 of the I. P. C. or either of those sections in respect of stolen property, the possession of which has been transferred by one offence.

(g) persons accused of any offence under Chapter XII of the I. P. C. relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

NOTE.—The foundation for the procedure of joint trial of different persons is their association from start to finish to attain the same end.

The fact that they carried out their scheme by successive acts done at intervals does not prevent the unity of the project from constituting the series of acts one transaction i.e. the carrying through of the same object which they had from the first act to the last.

20 cal. 358

5 Mad. 199

IV. Securing the presence of the accused and the witness

Although the Court has taken cognizance of an offence, the actual criminal proceedings can commence only when *the accused* and the witnesses are present in Court, the one to answer the charge and the other to give evidence.

How are they to be brought before the Court ?

Section 104

I. When cognizance is taken on police report based on investigation conducted under Section 173, the accused and witnesses are already before the Court.

II. When cognizance is taken otherwise than on police report under Section 173, the accused and the witnesses are not before the Court. They have to be brought before the Court.

What is the process for bringing them before the Court ?

The Criminal Procedure Code contemplates two such processes.

*Section 68***I. Summons to appear and II. Warrant to arrest***Section 68***I. Summons to appear**

Every summons issued by a Court under this Code shall be in *writting in duplicate, signed and sealed* by the *presiding officer* of such Court or by such other officer as the High Court may, from time to time by rule direct.

(2) Summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

*Section 69**Personal Service*

(1) Summons shall if, practicable, *be served personally* on the persons summoned, by delivering or tendering to him one of the duplicates of the summons.

(2) Every person served with summons shall, if so required by the serving officer, *sign a receipt* therefor on the back of the other duplicate.

(3) Service on Corporations

Service on incorporate company or other body corporate may be effected by serving it on the *Secretary, local manager or other principal officer of the corporation in British India*. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Section 70

Service when person cannot be found may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him.

The *person with whom* it is left, shall sign on the back of the duplicate.

Substituted service is improper where sufficient steps are not taken to serve accused personally.

Section 71

If this is not possible, then the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.

Section 72

Service on a Government Servant or of Railway Company.

Where person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily *send it in duplicate to the head of the office in which such person is employed*; and such head shall thereupon cause the summons to be served in manner provided by Section 69 and shall return it to the Court under his signature with the endorsement required by that Section.

(2) Such signature shall be evidence of due service.

Section 73

Service of summons out of local limits.

When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, *it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.*

Section 74

Proof of service in such cases when serving officer is not present.

(1) An affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by S. 69 or S. 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

Service on pleader is not sufficient.

6 C.W.N. 927

Copy should be served and it is not enough merely to show it.

5 B. H. C. R. 20.

Tender amounts to service if summons is refused.

28 M. L. F. 505.

Refusing to *receive* summons is no offence.

II Warrant of Arrest

Section 75

(1) Shall be in *writing, signed* by the Presiding Officer, or in the case of a Bench of Magistrates, by any member of such Bench and shall bear the seal of the Court.

Warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

(2) Difference between Summons and Warrant.

Summons is an order to the person to be summoned.

Warrant is *not* an order to the person to be arrested. Therefore a person can be punished for disobedience of a summons. But he cannot be punished for a disobedience of a warrant.

5 W.R.ed. 71.

Section 76

Court may direct Security to be taken.

(1) The Issuing Court may in its discretion direct by endorsement on the warrant that, *if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.*

(2) The endorsement shall state.

(a) The number of sureties;

(b) The amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(c) The time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer, to whom the warrant is directed, shall forward the bond to the Court.

Section 77

(1) *Warrant to whom directed.*

Warrant shall ordinarily be directed to one or more police-officer, and when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

(2) *Warrant addressed to more than one person.*

May be executed by all or by any one or more of them.

Section 78

(1) *Warrant may be directed to Land holder, farmer, or manager of land,*

for the arrest of (1) any escaped convict, (2) proclaimed offender, or (3) person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Who shall sign it and execute it, if the person is on the land under his charge.

(3) On arrest the person shall be made over to the nearest police station.

Section 79

A police officer to whom a warrant has been addressed may endorse it on to another police officer to execute.

Section 80

Arresting party shall notify the substance of the warrant to the person arrested.

Section 81

Subject to the provisions of Section 76 as to Security, the arresting party shall without unnecessary delay, bring the person arrested before the Court before which he is required to produce him.

Section 82

Warrant of arrest may be executed at any place in British India.

Section 83

When warrant is to be executed *outside the local limits of the jurisdiction of the Court issuing the same*, such Court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any Magistrate, or District Superintendent of Police, or the Commissioner of Police in a Presidency town, within the local limits of whose jurisdiction it is to be executed.

(2) The Magistrate or D. S. P., or Commissioner whom such warrant is so forwarded, shall endorse his name thereon, and if practicable, cause it to be executed in manner hereinbefore provided, within the local limits of his jurisdiction.

Section 84

When a warrant directed to a police-officer is to be executed outside the jurisdiction, he shall ordinarily take it for endorsement either to a Magistrate or to a police officer not below the rank of an officer in charge of a station within the limits within which the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same.

(3) If the obtaining of endorsement is likely to cause delay, it may be executed without endorsement.

Section 85

When arrest is made outside, the person arrested shall be taken to the Magistrate, D. S. P., Commissioner of Police.

Section 86

They shall then direct his removal in custody to the Court issuing the warrant

Effect of Non-execution of the warrant of arrest.

Section 87

If the person is absconding, such Court may publish a written proclamation requiring him to appear at a specified place and at a specific time not less than 30 days from the date of publishing such proclamation.

(2) How to publish the Proclamation.

(a) It shall be read in the place in which he ordinarily resides.

(b) It shall be affixed to some conspicuous part of the house in which he resides.

(c) A copy of it affixed to the Court house.

Section 88

The Court issuing a proclamation under Section 87 may at any time order the attachment of any property moveable or immoveable or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made.

Section 89

Restoration of attached property

If the person *appears* within 2 years after the date of the order of attachment and satisfies (1) That he did not abscond or conceal himself *and* (2) that he had not such knowledge of the proclamation as to enable him to appear within time—

Section 90

Against whom can Warrant be issued ?

Ordinarily, one would imagine, that it can be issued only against the accused. But that is not so. The law is that warrant can be issued against any person against whom a summons can be issued except a juror or assessor.

This means that a warrant may be issued even against a witness.

Provided:

(1) The Court sees reason to believe before the time for appearance that he has absconded or will not obey the summons ; or

(2) That at such time he fails to appear, and the summons is shown to have been duly served to enable him to appear in time but he does not appear.

Safeguard for continued presence of the Parties called before Court by due process

Section 91

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, *such officer may require such person to execute a bond with or without sureties for his appearance in such Court.*

Section 92

When any person who is bound by any such bond does not appear, the officer presiding may issue a warrant directing that such person be arrested and produced before him. Besides, the necessity of having before the Court the *complainant, the accused and the witnesses*. There is also the necessity having before the Court the *Corpus delicti*, which are the subject matter of the accusation or things which are necessary to prove the accusation.

Forged document, person confined

We must therefore consider the rules relating to the production of these.

I. PRODUCTION OF A DOCUMENT OR A THING.

Section 94

Whenever any Court considers the production of any document or thing is necessary or desirable for the purpose of investigation, inquiry or trial or other proceedings before such Court, he may issue a summons to the person in whose *possession or power* such document or thing is believed to be, requiring him to attend and produce it, at the time or place stated in the summons.

(2) When the summons is merely to produce, he need not attend. Sufficient if he sends it.

* * * * *

(Earlier part is not found—ed.)

Officer or Judge or in his presence and hearing under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Section 363

Sessions Judge and Magistrate shall also record remarks regarding demeanour of the witnesses whilst under examination.

Section 360

As the taking down of the evidence of each witness is completed, it *shall* be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

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

Omission to read over is an illegality.

II. BEFORE PRESIDENCY MAGISTRATES

Section 362

Appealable cases and non-appealable cases.

In appealable cases

The Magistrate shall take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court.

All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

The Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.

In non-appealable cases

It shall *not be necessary* for a Presidency Magistrate to record the evidence or frame a charge.

Section 359, 362(2),

Mode of recording Evidence

Evidence shall ordinarily be taken down in the form of a narrative, though the Court may in its discretion take down, or cause to be taken down, any particular question and answer.

Exception : Examination of the accused.

Section 364

The whole of such examination, including every question put to him and every answer given by him, shall be recorded in full.

This does not apply to the record of the examination of the accused by the High Court.

II. RECORD IN SUMMARY TRIALS

Section 260

1. The District Magistrate.

2. *Magistrate 1st class* especially empowered in this behalf by the Local Government.

3. Any Bench Magistrate invested with 1st class powers and especially empowered in this behalf by the Local Government may, if he thinks fit, try in a *summary* way all or any of the following offences:—

(a) Offences not punishable with death, transportation or imprisonment for a term exceeding six months and certain other offences mentioned in the Section.

Cases which can be tried summarily may be appealable or non-appealable.

Section 263

But they shall enter in such form as the Local Government may direct the following particulars.

- (a) The serial number.
- (b) The date of the Commission of the offence.
- (c) The date of the Report or Complaint.
- (d) The name of the complainant (if any).
- (e) The name, parentage and residence of the accused.
- (f) The offence complained off and the of fence (if any proved) and the value of the property in respect of which the offence is committed.
- (g) The plea of the accused and his examination if any.
- (h) The finding and in conviction brief statement of the reasons for it.
- (i) Sentence or other final order; and
- (j) The date on which the proceedings terminated.

In appealable cases.

Section 264

Before passing sentence the Court* shall record a judgement embodying the substance of the evidence and also the particulars required in non-appealable cases.

Such judgement shall be the only record in appealable cases.

Judgement

Section 366

The judgement in every trial in any Criminal Court *shall be pronounced*, or the substance of such judgement shall be explained;

- (1) In open Court, either immediately or in subsequent date to be notified.

Provided that the whole shall be read if requested by the parties.

- (2) The accused shall, if in custody, be brought up and if not in custody be brought up to hear judgement delivered.

Except where his personal attendance has been dispensed with and the sentence is of fine only or he is acquitted.

N. B.— (3) Judgement shall not be read if delivered in absence.

* Inserted—ed.

Section 367

Every judgement unless otherwise provided *shall be written* by the presiding officer of the Court or from his dictation.

Shall contain

(1) Point or points for determination

(2) The decision thereon and

(3) The reasons for the decision

(4) Shall be dated and signed by the Presiding officer in open Court at the time of pronouncing it, and where it is not written by the Presiding officer with his own hand, every page of such judgement shall be signed by him.

(5) It shall specify the offence (if any) of which, and the Section of the I. P. C. or other law under which the accused is convicted, and the punishment to which he is sentenced.

(6) When the conviction is under the I. P. C. and it is doubtful under which of the two parts of the same section of that Code the offence falls, the Court shall directly express the same and pass judgement in the alternative.

(7) If it be a judgement of acquittal it shall state the offence of which he is acquitted and direct that he be set at liberty.

(8) If the accused is convicted of offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall give reasons.

Provided that in trials by jury, the Court need not write a judgement but the Court of Session shall record heads of charge.

Section 368

When sentence of death—sentence shall direct that he be hanged by the neck till he is dead.

*Section 369**Alteration of judgement*

Save as otherwise provided by the Code or other law or in the case of the High Court, no Court, when it has signed its judgement, shall alter or review the same except to correct a clerical error.

(Even the High Court has no power.)

Section 370

Judgement by a Presidency Magistrate

Instead of recording a judgement in the above, a Presidency Magistrate shall record the following particulars :

- (a) Serial number.
- (b) The date of the commission of offences.
- (c) Name of the complainant (if any).
- (d) Name of the accused and (except in the case of European British subject) his percentage and residence.
- (e) The offence complained of or proved.
- (f) Plea of the accused and his exam (if any).
- (g) Final order.
- (h) Date of such order.
- (i) In all cases, where the sentence is imprisonment or fine exceeding 200 or both, a brief statement of reasons for the conviction.

Section 371

Copy of judgement to be given to accused without delay

In cases other than summons cases it shall be given free of cost.

In trials by jury, a copy of heads of charge by the jury shall be given to him.

In sentence of death, shall inform the accused of the period of limit for appeal.

Section 373

Court of Session to send copy of finding and sentence to the District Magistrate.

Criminal proceedings other than trial of an offender

I. Those dealing with keeping of peace and maintaining good order.

II. Those dealing with the enforcement of certain obligations. Family obligation and public nuisance.

III. Those dealing with the maintenance of public peace.

I. THOSE DEALING WITH THE PUBLIC ASSEMBLY—KEEPING OF PEACE AND MAINTAINING ORDER.

It is better to prevent crime than only to punish it when it is committed.

This theory is not accepted universally. Attempt to prevent crime may involve undue interference in the liberty of the individual.

English theory is inclined towards the view that the state should intervene only when the conduct of an individual amounts to a crime.

E. g.—English law of sedition, assembly.

On the other hand, the Indian Law takes a different view. *E. g.* Press Act, Public Meetings Act.

That being so, the Criminal Procedure Code enacts certain Sections to enable the Criminal Courts to prevent the commission of offences.

(Page left blank—ed.)

* * * *

Chapter VIII deals with offences against public tranquillity.

(Page left blank—ed.)

* * * *

The Court Contemplates the following usage fit for such preventative or anticipatory action.

1. There are quarrelsome people in every country in the world, and there are some quarrels which may lead to violence and even to serious crime.

2. In the same way certain forms of propaganda, if carried on without any restraint, may induce ignorant persons to do harmful things, they may be circulating falsehoods, or even more deadly half-truths, cause ignorant persons to believe, to act upon the belief, that malicious designs are being entertained which in fact are not entertained by any one.

3. Again there are those who prefer a life of idleness, varied by occasional crime when detection seems unlikely, to one of honest work. There are also persons who live mainly on the proceeds of crime committed by themselves, or on a share of the proceeds of crime committed by others, whom they help to escape detection, or assist by setting up an organization which affords its supporters both opportunity to dispose of the proceeds of their dishonesty and a fair prospect of immunity from punishment.

4. Habitual Offenders.

Section 183

9. Where an offence is committed while the offender is on a journey or voyage, the offence may be inquired into or tried by a Court through or into the local limits of whose jurisdiction

the offender or

the person against, whom or

the thing in respect of which

the offence was committed

passed in the course

of that journey or voyage.

Section 184

10. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post office, or Arms and Ammunitions, may be inquired into and tried in a Presidency Town.

Section 185

11. In cases of doubt, High Court to decide upon which Subordinate Court is to have jurisdiction.

Where two or more subordinate Courts, *not* subordinate to the *same* High Court, the High Court within whose appellate Cr. Jurisdiction the proceedings were *first* commenced, may decide and give directions.

Section 186

12. When a Presidency Magistrate, District Magistrate or Sub-Div. Magistrate or a Magistrate of the 1st Class especially empowered by Local Government sees reason to believe that any person within the local limits of his jurisdiction has committed an offence *without* such local limits (within or without British India) an offence which *cannot* be inquired into or tried within such local limits, but which by some law for the time being in force, be inquired into or tried in British India.

Such Magistrate may inquire into the offence and compel such persons to appear and send him to a Magistrate having jurisdiction.