CHAPTER 1

Practice in the Trial of Criminal Cases

Part A
GENERAL

1. Court Hours—(1) All Criminal Courts in Punjab and Delhi shall sit at the same hour on every day that is not a holiday for Criminal Court. The ordinary Court are from 10 A.M. to 4 P.M. with an interval for luncheon from 1 to 1-30 P.M. Saturdays shall be full working days for Courts and offices attached thereto but the last Saturday of each month may be observed as a close day. The working hours for offices attached to Criminal Courts are from 10 A.M. to 5 P.M.

Change of hours during summer—These hours may be varied in Summer (May to September) with the previous sanction of the High Court if it would be for the convenience of the litigating public generally and of the Courts to do so.

Ordinarily, when change of hours is desired, the Deputy Commissioner should apply though the District and Sessions Judge; but if the Deputy Commissioner does not move in the matter and the District and Sessions Judge desires the change, he should apply after consulting the Deputy Commissioner. The date from which it is proposed that any change should take effect should, be fixed sufficiently ahead in order to allow not only for time for obtaining the sanction of the High Court, but also for proper notice to the Public in general and to the parties to criminal cases in particular. It is not necessary to obtain the sanction of the High Court before the normal Court hours are reverted to at the close of summer, but such reversion should take place at the same time for all Court, civil and criminal, and the Deputy Commissioner and District and Sessions Judge should consult each other before the reversion is ordered.

[1](2) *Local and seasonal changes*—In view of the intensity of heat all civil and criminal Courts in the districts of Rohatak, Hissar and Gurgaon shall work from 7 A.M. to 1 P.M. with no interval for lunch from 1st May to 15th July. No reference need be made to the High Court for change of Court hours during summer in these districts.

[2](3) The working hours for offices located at the hill stations of Simla, Dharamsala and Kulu sub-division are sometimes cut short by an hour during certain winter months by instructions issued from time to time.

(4) *Court hours for Honorary Magistrates*—Regarding Court hours for Honorary Magistrates at Delhi.

2. Closing Hour—The hearing of a case taken up before 4 P.M. (or whatever may be the closing hour of the Court) may, if necessary be continued for a short time after that hour; but no new case should be taken up after the hour when the Court is timed to rise.

3. Place of Sitting—All trials when held at the headquarters of a district or sub-division should be conducted by officers at their Court houses only. The Honorary Magistrates or a Bench of Honorary Magistrate at Delhi shall, unless otherwise permitted by Government hold Court in Government or Government rented building within the limits of a Municipal, Cantonment or Notified Area. Criminal cases should as a rule be taken up at the headquarters of a district or tehsil, but when it becomes necessary to take up a case on tour, care should be taken to see that the parties get due notice of the place and hour fixed for their attendance.

4. Petition Box—(a) A petition box shall be placed in the verandah of the Court house about one hour before the Court sits, an official being specially made to attend early for this purpose. It shall be opened in the presence of the Magistrate about 15 minutes after the Court opens when all petitions shall be initialed by him. The Magistrate shall pass proper orders forthwith or inform the petitioner when orders will be ready after the necessary Kaifiyats have been put up. The box shall be replaced in the verandah and opened again shortly before the Court rises for luncheon in the presence of the Magistrate and the same procedure followed. It shall then be replaced once more in the verandah and opened for the last time
15 minutes before the time fixed for the rising of the Court and the procedure prescribed above followed. After the box has been opened for the third time, it shall not be replaced in the verandah but petitions may thereafter be presented upto the closing hour of the Court to the Magistrate personally who shall receive them.

A list of all miscellaneous petitions, etc., on which orders cannot be passed forthwith, should be prepared and exhibited outside the Court room specifying the date fixed for the disposal of each petition.

(b) *Urgent Matters*—In urgent cases, however, the Magistrate may exercise his discretion and personally receive documents presented to him direct at any time.

(c) *Ministerial staff not to receive petitions etc.*—The members of the ministerial establishment are strictly forbidden to receive complaints, petitions or other documents direct from lawyers and their clerks or from litigant except when the Magistrate is on leave and no other Magistrate is in charge of his current duties. District Magistrates should, however, invariably make arrangements for the reception of complaints, petitions, etc. by another Magistrate when a Magistrate is temporarily absent on leave, tour or otherwise. Where there is a single Magistrate at a station such as a Moffassil or outlying Court, District Magistrates should issue such orders as may be necessary in the peculiar circumstances of each case to ensure the convenience of the general public.

(d) *Exceptions*—The above orders do not apply to applications put in by counsel for the inspection of records which may be presented to the Magistrate personally, nor do they apply to talbanas and stamped postal envelopes filed by litigants which should be received direct by the Ahlmad or the Moharrir and a receipt given for the same whether demanded or not.

(e) *Bail applications*—A list showing the hours at which bail applications and other miscellaneous applications are entertained shall be displayed outside the Court room of each Magistrate. Urgent application may, however, be entertained outside the hours fixed for ordinary applications.

5. Open Court—Section 352 of the Code of Criminal Procedure (Section 327 of New Code) lays down that the place where a Criminal Court is held "shall be deemed an open Court to which the public generally may have access so far as the same can conveniently contain them", but the discretion to exclude the public from the ordinary Court room rests with the Presiding Magistrate. When, however, the Presiding Magistrate, for any reason, excludes the public by holding his Court in a building such as jail, to which the public is not admitted (and he is not entitled) to do so without permission of the Department concerned he should obtain the sanction of Government thereto, through the District Magistrate, and should inform the High Court that sanction has been accorded.

6. Speedy disposal of cases—Magistrates should as a rule give priority to Criminal cases over other work, especially when an accused person is in custody. Attention is drawn to the new sub-section (1) inserted in Section 344 of the Code by the Code of Criminal Procedure (Amendment) Act, 1955, (No. 26 of 1955), *[see* Section 309(1) of new Code] according to which in every enquiry and trial the proceedings shall be held as expeditiously as possible. In particular, when the examination of witnesses has once begun the proceedings shall be continued from day to day until all the witness in attendance have been examined. If the adjournment of the case beyond the following day is considered necessary the Court must record its reasons in writing. The new proviso to sub-section (1-A) further says that when witnesses are in attendance an adjournment or postponement cannot be granted without examining them, except for special reasons to be recorded. Adjournments when necessary should be as short as possible, according to the circumstances of the case. Special care should be taken in the trial of a person accused of a non-bailable offence who is in custody as according to the new sub-section (3-A) of Section 497 of the Code (as inserted by Act No. 26 of 1955) *[see* Section 437(6) of the new Code] if the trials is not concluded within sixty days of the first date fixed for taking evidence in the case, the person may have to be enlarged on bail. The Court has to record its reasons if it decides to keep the accused in custody beyond the period of sixty days mentioned in the said sub-section.

7. Reasonable cause for postponement—It is not a reasonable cause of postponement under Section 344 of the Criminal Procedure Code *(see* Section 309 of new Code] except for a short period, that there are other accused in the case for whose arrest it is considered by the Court desirable to wait in order that all the accused may be put on their trial together. Such an order consults the convenience of the Court and witnesses only, whereas every accused has a right to have the evidence against him recorded at as early a period as possible.

8. Witnesses should not be produced on the date of presentation of the challan. Section 251-A, inserted in the Code by Act No. 26 of 1955, [now *see* Sections 238, 239, 240(1)(2), 241, 242(1)(2), 243(1)(2)(3), 248(1)(2) of new Code] lays down a New procedure for the trial of warrant cases instituted on police report. When the accused appears or is brought before the Magistrate, he has to satisfy himself that the document referred to in sub-section (1) of Section 173 have been furnished to the accused as required by sub-section (4) and (5) inserted in Section

173 by Act No. 26 of 1955 [now *see* Sections 173 (3) to (7) of new Code]. Sub-section (4) requires that the accused should have been furnished with these documents before the commencement of the inquiry or trial. It is therefore, desirable that the accused should have a reasonable time to study these documents before the Magistrate proceeds to examine and hear the accused under sub-section (2) and (3) of Section 251-A [now *see* Sections 238, 239, 240(1)(2), 241, 243(1)(2)(3), 248(1)(2) of new Code]. If the Court frames a charge and the accused does not plead guilty a date for the examination of witnesses for the prosecution will be fixed at that stage.

These instructions do not, however, apply to such summons cases the trial of which can be completed forthwith and should not be delayed even for a few days. Now a summons case would be a case relating to an offence which is punishable otherwise than with death or with imprisonment exceeding one year.

9. Relief to Courts—In criminal cases, in which the proceedings are likely to be protracted, the proper course for the Magistrate trying the case is to apply to the District Magistrate to be relieved of other work to such an extent as to enable him to deal promptly and efficiently with the case. If for any reason such cases have to be taken up by a District Magistrate or a Treasury Officer, it will usually be possible for such officers on the district staff. If, however, the ordinary staff is not sufficiently strong temporary assistance should be applied for.

10. Adjournments caused by holidays, etc.—On the occurrence of an unexpected holiday or the unexpected absence of an officer, the Presiding Officer, before his departure or before finishing the work on the day proceeding the holiday, should himself fix fresh dates of hearing in the peshi register for the cases fixed for the day in question. The register, should then be made over to the reader of the Court, or in the case of a holiday to a selected reader, who should be made responsible for informing all parties and witnesses of the adjournments given on their coming to attend the closed Court or Courts. On holidays the duty Magistrate at headquarters should check and supervise the work of the selected reader for the Criminal Courts at least once in the course of the morning.

11. Daily progress reports—The forms prescribed for reporting the daily progress of cases should be used by Magistrates without fail and a copy should be sent daily to the District Magistrate or Sub-Divisional Officer as the case may be.

12. Explanation for delay in quarterly statements—Magistrates shall furnish in quarterly criminal statement No. 11, explanations of delay in the disposal of cases pending over 4 months.

13. History Sheets—Magistrate shall submit history sheets containing abstract of orders passed in different dates in all cases pending over one year provided they are not stayed. When delay is said to be due to a transfer application pending in a higher Court, it is the duty of the higher Court concerned to look into and remark on the causes of delay and to expedite disposal of the transfer application.

Part B
INITIATION OF PROCEEDINGS

1. Manner in which Magistrate may take cognizance of an offence—Section 190 of the Code of Criminal Procedure provides that a Magistrate who is specially empowered in this behalf may take cognizance of any offence:—

(a) upon receiving a *complaint* of facts which constitute such offence;

(b) upon a *report* in writing of such facts made by any Police officer;

(c) upon *information* received from any person other than a Police officer, or upon the *Magistrate's own knowledge or suspicion,* that such offence has been committed.

Note—A Magistrate of third class cannot take cognizance of an offence upon information or knowledge.

2. Right of accused for transfer of a case taken up by a Magistrate on information or knowledge—In most cases Magistrates take cognizance either under clause (a) upon a complaint or under clause (b) upon the report of a police officer.

A Magistrate taking cognizance of an offence under clause (c) must, before any evidence is taken, inform the accused person that he is entitled to have the case tried by another Court, and if the accused objects to being tried by such Magistrate, the case must be committed to the Court of Sessions, or transferred to another Magistrate (Section 191).

3. Complaints how to be dealt with—Complaints of offence made in writing should be received during office hours on all days other than public holidays. Upon the institution of a complaint, the date of presentation should be immediately endorsed thereon, together with the name of the Magistrate to whom the case is to be sent for inquiry to trial under Section 192 of the Code, and the complainant directed to appear before him either the same day or one of the following days for examination of the complainant and the witnesses present, if any. Similarly if the complaint has not been made in writing, the Magistrate should direct the complainant and his witnesses to the proper Court.

4. Oral examination of complainant and preliminary inquiry—The first duty of Magistrate taking cognizance of an offence on complaint is to examine the complaint and the witnesses present, if any, on oath and to record the substance of the examination in writing. The same shall be signed by the complainant and the witnesses and also by the Magistrate. Such examination of the complainant etc. is not necessary where a complaint in writing is made (a) by a Court or a public servant acting or purporting to act in the discharge of his official duties or (b) when a Magistrate empowered under Section 192 of the Code decides to transfer the complaint to a Subordinate Magistrate. The duties of a Magistrate receiving a complaint are detailed in Sections 200 to 203 of the Code, to the latter of which strict attention should be paid. Magistrate of the first and second clauses to whom along have the power to direct an inquiry under Section 202, should not refer complaints of non-cognizable offences to the Police for inquiry, except for very

special reasons, and in all trivial cases one of the other modes of inquiry permitted by the section should be adopted.

5. When process should issue against accused—When the complainant and the witnesses present, if any have been examined and any inquiry or investigation ordered under Section 202 has been completed, the Magistrate may dismiss the complaint, if, in his judgment there is no sufficient ground for proceeding. If the Magistrate finds sufficient ground for proceeding he should issue process for the attendance of the accused. No summons or warrant shall however be issued against the accused until a list of prosecution witnesses has been filed and in proceedings instituted upon a complaint made in writing the summons or warrant shall be accompanied by a copy of the complaint [sub-section (1-A) and (1-B) of Section 204].

6. Importance of examination of complainant before issue of process—The examination of complaints and the witnesses prescribed by the Code of Criminal Procedure is not a mere formality, as the result of the examination enables the Magistrate to determine whether he will put the machinery of the Criminal Court in motion by issuing a summons or warrant to cause the attendance of the accused before him. Section 203 lays down that if, in the judgment of the Magistrate, there is no sufficient ground for proceeding, he shall dismiss the complaint. The preliminary examination, therefore, if properly made, will frequently result in the summary dismissal of a complaint and save innocent person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interest of the public, therefore, as well as with a view to the repaid despatch of work, a careful observance of the law in this particular is incumbent upon Magistrates.

7. Presentation of Police report. Changes in law—The provisions of the law as to the procedure of the Police in investigating offences and submitting reports in regard thereto are dealt with in this Volume in Chapter 11, Police. The power to hold a preliminary magisterial inquiry into cases reported by the Police, conferred by Section 159 of the Code, should not be lost sight of. For the duties of Magistrates in ordering remands to Police custody. Chapter 11, referred to above, should be consulted. After completion of the investigation the police present a report (usually called a challan under Section 173 of the Code and upon such report Magistrate can take cognizance under-clause (b) of Section 190. Section 173 has been recently amended by Act No. 26 of 1955 and the new sub-sections (4) and (5) provide that before the commencement of the inquiry of trial the accused should have been furnished, free of costs of copy of the report forwarded under sub-section (1), of the first information report recorded under Section 154 and of all other documents of relevant extracts thereof, including statements and confessions, if any, recorded under Section 164 and Statements of all prosecution witnesses recorded under sub-section (3) of Section 161. Where copies of portions of the documents and police record mentioned above have been withheld by the police officer under sub-section (5) the Magistrate shall at the commencement of inquiry or trial commencement of inquiry or trial consider how far the Police officer was justified in not supplying copies of these documents etc. and may direct copies of parts excluded or portions thereof, as he thinks proper, to be supplied to the accused. Thereafter the Magistrate shall proceed in warrant cases instituted on police report according to the procedure laid down in Section 251-A of the Code as inserted by Act No. 26 of 1955 [now *see* Sections 238, 239, 240(1)(2), 241, 242(1)(2)(3) and 248(1)(2) of new Code].

8. Inquiry into nature of offence and other preliminaries in order to see whether Court has jurisdiction—The question of jurisdiction requires careful attention at the initial stage. Schedule II of the Code of Criminal Procedure shows the classes of Courts by which different offences are triable. In determining the nature of the offence, the facts ascertained by the examination of the complainant and his witnesses and the preliminary inquiry (if any), should be taken into consideration and importance should not be attached to the particular section specified or the offence alleged in the complaint, as complaints are often drafted by men ignorant of law, and there is also a tendency of exaggerate the nature of the offence. It should be also remembered that certain offences cannot be taken cognizance of at all except upon the complaints of certain person or Courts or with the previous sanction of the Government (vide Sections 195-199-A, Criminal Procedure Code). [Now *see* Section 195-198 of the new Code].

9. Jurisdiction also depends on the place of commission of offence—The question of jurisdiction arises also with reference to the place of inquiry or trial. The general rule prescribed by Section 177 is that an offence shall be ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed, but the subsequent sections create various exceptions to this rule.

10. Cases where place of commission of offence is ascertain—When for instance it is uncertain in which of several local areas an offence was committed; or where an offence is committed partly in one local area and partly in another; or where the offence is a continuing one and continues to be committed in more local areas than one; or where the offence consists of several acts done in different local areas; it may be inquired into or tried by a Court having jurisdiction over any of such local areas. The same rule applies to offences committed on a journey, which may be inquired into or tried at any place through which the offender or property affected passed in the course of such journey.

11. Procedure where Magistrate thinks that he has no jurisdiction or cannot impose proper sentence—If a Magistrate finds that the offence disclosed is not triable by him, he should report the case to the District Magistrate for its transfer to a competent Court. He should take similar action when he finds that although he has jurisdiction to try the offence, he will not be able to impose an adequate sentence in the event of a conviction.

Part C
(i) ATTENDANCE OF ACCUSED PERSONS

1. When summons or warrants should issue—When a Magistrate taking cognizance of an offence is of opinion that there is sufficient ground for proceeding, he must decide whether a summons or a warrant should issue in the first instance for the attendance of the accused. The fourth column of the second Schedule of the Code shows, in regard to offences, whether a summons or a warrant should ordinarily issue.

Sub-sections (1-A) and (1-B) of Section 204 require that no summons or warrant shall be issued against the accused until a list of prosecution witnesses has been filed and that where a proceeding is instituted upon a complaint in writing the summons or warrant shall be accompanied by a copy of the complaint.

2. Discretion of Magistrate to issue summons or warrants—Even where the law provides for the issue of a warrant in the first instance, a Magistrate may, in his discretion, issue a summons. On the other hand, a Magistrate may, after recording his reasons for as doing issue a warrant instead of a summons in a case in which the law provides for the issue to the first instance of a summons. Sections 90 and 204 of the Code [now *see* Sections 87 and 204 of new Code] should be referred to on this subject. The former section authorises the issue of a warrant instead of a summons (1) where the Court has reason to believe that the accused has absconded or will not obey the summons, or (2) if, after service of a summons, the accused fails to appear and offer no reasonable excuse for non-attendance. It should also be borne in mind that where process-fees or other fees are payable, a process should not issue until such fees are paid, and that in default of payment of the fees within a reasonable time, the Magistrate may dismiss the complaint.

3. Warrant should not issue unless absolutely necessary—Great care should be taken not to issue a warrant when a summons should be sufficient for the ends of justice. Magistrate should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see that no greater hardship is caused than is necessary. Under Section 76 of the Code [now Section 71 of new Code] a Court has the discretion to make the warrant bailable, and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of the case.

4. Bail—When the accused person appears before the Court the question of bail arises. In the case of a bailable offence an accused person must be allowed to remain at liberty if he can furnish bail for his appearance during the course of the trial. A Magistrate has the discretion to allow bail even in the case of non-bailable offences in certain circumstances.

5. When attendance of accused may be dispensed with—A criminal trial should be conducted in the presence of the accused. Sections 205 and 540-A (as amended by Act 26 of 1955) of the Code [now *see* Sections 205 and 311 of New Code] give a discretion to the Court to dispense with the personal attendance of the accused in certain circumstances.

6. Service of processes—The provisions of the law relating to the service of processes on persons employed in the public service require special attention.

(ii) ATTENDANCE OF PRISONERS IN CRIMINAL COURTS

1. Attendance of prisoners in Criminal Courts—The attendance of any person confined in any prison may be required by any Criminal Court either :

(a) to give evidence, or

(b) to answer a charge of an offence.

2. Act No. 32 of 1955—In cases (a) above, any Criminal Court may make an order in the form set forth in the First Schedule of the Prisoners (Attendance in Courts) Act, 1955 (No. 32 of 1955) and directed to the officer in charge of the prison. In case (b) above, the order shall be made in

the form set forth in the second Schedule of the said Act and shall, likewise, be directed to the officer-in-charge of the prison. Such orders of a Criminal Court inferior to the Court of a Magistrate of the first class shall not have effect unless counter-signed by the District Magistrate to whom that Court is subordinate or within the local limits of whose jurisdiction the Court is situate.

Note—Act No. 32 of 1955 extends to whole of India, except the State of Jammu and Kashmir.

3. Prison, Definition of—(1) Prison includes :

(i) any place which has been declared by the State Government, by general or special order to be subsidiary jails ; and

(ii) any reformatory, borstal institution or other institution of a like nature [Clause (b) of Section 2, *ibid}.*

(2) 'State Government' in relation to a Union territory means the Lieutenant-Governor or, as the case may be, the Chief Commissioner of that territory [Clause (c) of Section 2, *ibid}.*

4. **Exemptions**—Under Section 4 of the Act, the State Government may, under the circumstances mentioned in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he/they may be confined. The provisions of Section 3 shall not apply to such person or persons so long as any such order remains in force.

5. Officer-in-charge of a prison to produce the person confined before the Court—On the delivery of any order made under Section 3, the officer-in-charge of the prison in which the person named in confined shall cause that person to be taken to the Court in which his attendance is required, on the date and time mentioned in the order. He shall cause that person to be detained in custody, in or near the Court, until the presiding officer of the Court authorises him to be taken back to the prison. (Section 5, *ibid).*

6. When he may abstain from carrying out orders of Court—The Officer-in-charge of the prison shall abstain from carrying out an order made under Section 3 under the circumstances mentioned in Section 6 of the Act. He shall not however so abstain from carrying out the orders of a Criminal Court if the person named in the order is not declared in accordance with rules made in this behalf to be unfit to be removed from the prison in which he is confined or where the person named in the order is required to attend at a place which is not more than five miles distant from that prison.

7. Examination on commission—Save as otherwise provided in this Act and any rules made thereunder, the provisions of the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, as the case may be shall, so far as may be, apply in relation to the examination on commission or otherwise on any person confined in a prison as they apply in relation to the examination on commission of any other person (Section 8, *ibid).*

8. Court's orders to issue in time—In order to avoid unnecessary delays in the trial of Criminal cases it is essential that all orders for the production of persons confined in a prison should be issued well in advance of the date fixed for the hearing of the case.

Part D
PROCEDURE IN ENQUIRIES AND TRIALS BY MAGISTRATES

(a) General Remarks

1. Procedure in the trial of cases—The Code of Criminal Procedure recognises four distinct methods of procedure in the trial of criminal cases by Magistrates, namely:—

(a) the procedure prescribed for the trial of summons-cases ;

(b) the procedure prescribed for the trial of warrant-cases instituted on police reports;

(c) the procedure prescribed for the trial of other warrant-cases ; and

(d) the procedure prescribed for summary trials.

As to the manner of recording evidence prescribed in regard to each of these forms of procedure reference should be made to Part E of this Chapter. Stated generally there is in the summons-case, ordinarily a memorandum of the substance of the evidence and defence and no more. As for other trials before a Court of Session, or a Magistrate and in enquiries under Chapter XII and XVII of the Code, Section 356 [now *see* Section 275 of the new Code as amended by Act 26 of 1955] enables the presiding officer to have the evidence of each witness taken down in writing, in the Court language, from his dictation in open Court. In cases where the Presiding Officer has taken down the evidence with his own hand or has caused it to be taken down in writing from his dictation in open Court as laid down in sub-section (1) of Section 356 he need not made a memorandum of the substance of what the witnesses depose; if the evidence is recorded any of the other manners laid down, then in warrant cases and inquiries under Chapter XII and XVII of the Code it may be necessary to have a double record as before. In a summary trial in which an appeal lies, the Magistrate or Bench shall in addition to the particulars mentioned in Section 263 of the Code record the substance of the evidence and before passing any sentence, record a judgment in the case. The recent amendments of Section 264 of the Code deserve attention.

The main differences in the procedure prescribed for conducting trials under each method will now be alluded to briefly.

(b) Procedure in the trial of summons cases

2. Summons cases, and admission by accused—(1) In view of the amendment of the definition of 'warrant-case' by Act No. 26 of 1956, a 'summons-case' would now be a case relating to an offence which is punishable otherwise than with death or with imprisonment exceeding one year.

(2) In a summons-case (Chapter XX of the Code), when the accused person is before the Court, the particulars of the offence of which he is accused are stated to him and he is asked to show cause why he should not be convicted. No formal charge is prepared. (Section 242 of the Code (now *see* Section 251 of new Code). If the accused admits that he has committed the offence, his admission should be recorded as nearly as possible in his own words, and if he shows no sufficient cause why he should not be convicted, he may be convicted accordingly. (Section 243, now *see* Section 252 of new Code).

3. Summons cases, and denial by accused—If the accused denies that he has committed the offence, the complainant and his witnesses must be examined, the accused must be heard, and evidence produced by him taken. The parties are required to have their respective witnesses present at the hearing and it is open to them to apply to the Court, in sufficient time, to issue process to compel the attendance of any witness or the production of any document or other thing required in evidence. The cost of the processes and the reasonable expenses of witnesses should be paid by the parties, respectively. (Section 244, now *see* Section 254 of new Code).

4. Conviction for a different offence—When the parties and their evidence have been heard, the Magistrate will pass an order of acquittal or conviction, as the case may be. (Section 245, now *see* Section 254 of new Code). An accused person may be convicted of any offence triable as a summons-case of which he may be found guilty, whatever the nature of the offence specified in the complaint or summons. [Section 246, now *see* Section 255(3) of new Code].

5. Adjournment—In a summons-case instituted on complaint, if the complainant fails to attend on any day fixed for hearing, the accused should be acquitted unless the Magistrate thinks proper to adjourn the hearing to some other day. In view of the proviso to Section 247 [now *see* Section 255(3) of new Code], as amended by Act 26 of 1955, the Magistrate can also dispense with the complainant's attendance and proceed with the case. A summons-case may, with the permission of the Magistrate, and for sufficient grounds, be withdrawn at any stage before the order is passed and the accused acquitted (Section 248, now *see* Section 257 of new Code). Section 345 of the Code (now *see* Section 320 of new Code) permits certain offences, some of which are summons-cases, to be compounded without the permission of the Court, and should be read with Section 248 (now *see* Section 257 of new Code). Other offences, including that of causing grievous hurt, punishable under Section 325, Indian Penal Code, are compoundable with the permission of the Court. Offences may, with the permission of the Appellate Court, be compounded after conviction, and, with the permission of the Court to which the case has been committed, after commitment. In a summons-case instituted otherwise than on complaint, the Magistrate may for sufficient reasons to be recorded by him, stop proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused; but a Magistrate of the second or third class can act in this manner only with the previous sanction of the District Magistrate. (Section 249, now *see* Section 258 of new Code).

It frequently happens that applicants for revision urge that no proper opportunity was given to them to call witnesses to rebut the evidence for the prosecution, and there is often nothing on the record to show that this allegation is not well founded. Under Section 244 of the Code of Criminal Procedure (now *see* Section 254 of new Code) the accused, in a summons-case, is primarily responsible for the production of his evidence on the day of hearing; but even in these

cases the Court should, as a matter of precaution, at the conclusion of the case for the prosecution, ascertain from the accused whether he has any witnesses, and should not refuse to give him a further opportunity of bringing or summoning witnesses who may not be present in Court unless it appears that their evidence is not material or that the accused has been wilfully negligent in the matter. In every summons-case in which no witnesses are produced for the defence, the Court should record either that the accused does not wish to call witnesses, or that for reasons stated he has been refused a further opportunity of doing so. In order that persons accused in summons-cases may have a better opportunity of knowing what the law expects of them, a clause has been added to the form of summons warning the person addressed that, unless he is prepared to admit the offence with which he is charged, he must bring his witnesses with him on the day fixed for hearing.

(c) Procedure in the trial of warrant cases instituted on Police Report

6. Warrant case on Police report—In a warrant-case (Chapter XXI of the Code) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 251-A (now *see* Section 238-243 and 248 of new Code) as inserted in the Code by Act 26 of 1955 governs the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the Magistrate, he (the Magistrate) should, at the commencement of the trial, satisfy himself that the documents referred to in Section 173 have been furnished to the accused. If this has not been done the Magistrate shall, subject to the provisions of Section 173 (5) cause them to be furnished to the accused. Sub-section (4) of Section 173 requires that the Officer-in-charge of the police station should have done so before the commencement of the inquiry or trial and the accused should therefore have a reasonable time to study these documents before the trial commences.

7. Discharge of accused—The Magistrate shall then consider all these documents and make such examination of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard, make up his mind whether he should frame a charge. It is not now necessary that any prosecution witnesses be examined before the charge is framed. If the Magistrate considers the charge against the accused to be groundless he shall discharge the accused. If the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and can adequately punish, he shall frame in writing a charge against the accused.

8. Course to be adopted when Magistrate is not competent to try case or is not able to adequately punish—If the Magistrate is not competent to try the case as made out by the prosecution, or sees reason to think that he could not adequately punish the accused in case of conviction, he should, at this stage, take the orders of the Magistrate to whom he is subordinate, or proceed under Chapter XVIII, if so empowered. The power of reference conferred by Section 349 of the Code (now Section 325 of new Code) is limited to cases in which, after the trial is complete, a Magistrate of the second or third class considers that he cannot adequately deal with the case. Sections 254 or 251-A (3) [now *see* Sections 246(1) and 238-243 and 248 (1)(2) of new Code] are of general application and require the Magistrate to form an opinion before the charge is framed as to his being able to adequately punish the accused in case of conviction. Where it is clear at this stage that he cannot, in the event of conviction, adequately punish the

accused, he should stay proceedings and refer the case to the District Magistrate for orders or, if competent, proceed to hold an inquiry with a view to committing the accused for trial.

9. Framing and joinder of charge—The provisions of Chapter XDC of the Code as to the framing of the charge should be carefully consulted. Sections 221 to 223 (now *see* Sections 211 to 213 of new Code) show the form in which a charge must be drawn up and the particulars which must be entered therein; and Sections 233 to 239 (now *see* Sections 218 to 233 of new Code) show how charges may be joined, when they should be in alternative form, and what persons may be charged jointly. Special care is needed in the matter of joinder of charges. It has been held by the Privy Council that misjoinder of charges against the express provision of law vitiates a trial *{see* 25 I.L.R. Madras, 61 P.C). Section 235 (now *see* Section 20 of new Code) is also important and should be read with Section 71 of the Indian Penal Code.

In all cases in which it is intended to prove previous convictions for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction should be set out in the charge.

10. Pleading of accused to charge—The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried. If the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon; but it is to be remembered that a plea of guilty can only be recorded when the accused person raises no defence at all. If, for example, he admits material facts, but denies guilty knowledge or intention, the plea cannot be regarded as one of 'guilty'. If the accused refuses to plead or pleads 'not guilty' he should be called upon to enter upon his defence after the prosecution case is closed.

When previous convictions are included in the charge, the accused should also be asked whether he admits the convictions and his reply should be recorded. If he denies them the convictions must be proved in the manner prescribed in Section 511 (now *see* Section 298 of the new Code) after the accused is convicted of the offence with which he is charged (Section 255-A) [now *see* Section 248(3) of new Code].

If the accused does not plead as above or claims to be tried the Magistrate shall fix a day for the examination of the witnesses for the prosecution. The Magistrate may permit the cross-examination of any prosecution witness to be deferred until any other witness or witnesses have been examined and may recall any witness for further cross-examination.

11. Day to day hearing—After the charge has been framed the Magistrates should insist on day-to-day hearings until the prosecution evidence is concluded. In this connection the instructions with regard to speedy disposal of cases contained in para 6 of Chapter 1-A and the recent amendments of the Code mentioned therein may be carefully studied. The recently inserted Section 510-A (Now Section 296(1)(2) of new Code) now permits evidence of a formal nature to be given on affidavits; but the Court may and if so required by the prosecution or the accused, shall summon and examine the person making the affidavit as to the facts contained therein. The remarks in this para apply also to defence evidence.

12. Examination of accused and his entering upon his defence—After all the witnesses for the prosecution have been examined and before the accused is called on for his defence, the Court must examine the accused and question him generally on the case as required by Section 342 (now *see* Section 373 of the new Code) for the purpose of enabling the accused to explain any circumstances appearing in the evidence against the accused. An examination of the accused for that purpose can also be made at any earlier stage of the case but such examination at the conclusion of the prosecution evidence is mandatory. High Courts have an appeal set aside, as materially irregular, conviction in cases where such examination was not made at this stage in the trial of the case. In this connection see 1953 Supreme Court Reports 418. An examination of the accused under sub-section (1) of Section 342 (now Section 373 of new Code) shall be without oath.

If the accused puts in any written statement it shall be filed with the record. [Section 251-A(8) now Section 243 (1) of new Code].

As regards the manner in which statements of accused persons should be recorded, detailed instructions will be found in Chapter 13.

13. Court to assist accused in conduct of the case—In a very large number of criminal appeals and in numerous petitions for revision one of the principal grounds taken is the alleged existence of some special hostility to the accused on the part of the prosecution witnesses, or of some tie (whether of relationship or friendship) between them and the complainant in the case. Such points should doubtless be elicited by the accused in the Court of first instance in cross-examination. But few, except old offenders, understand the object of cross-examination. If, in addition to asking in accused person to cross-examine the witness, Magistrates would, where the accused is not represented by counsel, at the conclusion of each witness' statement call on the accused to state what objection he has to make to the evidence given by him, such matters would be cleared up.

Another frequent ground taken in appeal is that the accused did not understand what he was required to prove or disprove, or was not asked what evidence he could give to rebut the case for the prosecution. These points should be as clearly explained to persons accused of criminal offences as are the issues to the parties in a civil suit, and all Magistrates should devote particular attention to this matter.

14. Defence witnesses and cost of summoning them—The Magistrate is bound to cause the production of and hear all witnesses whom the accused desires to call, and to consider any documentary evidence relied on by him. The only exception to this rule is where the Magistrate considers that in naming any witnesses the object of the accused is to cause vexation or delay or to defeat the ends of justice. In case the Magistrate refuses to receive his reasons for such refusal in writing. In view of the proviso to sub-section (9) of Section 251-A [now *see* Section 243(2) new Code] the attendance of a witness should not be compelled at the request of the accused where he has cross-examined or has had the opportunity of cross-examining the witness after the framing of the charge, unless the Magistrate is satisfied that is necessary for the ends of justice.

In view of Section 342-A of the Code (now Section 315 of new Code), as inserted by Act 26 of 1955, an accused may now appear as a witness for the defence and may give evidence on oath in disproof of the charges made against him or a co-accused. He cannot, however, be so examined except on his own request in writing and his failure to do so cannot be made the subject of any comment by the parties or the Court or raise any presumption against him or a co-accused.

The Magistrate may, before summoning any witness applied for by the accused, require the accused to deposit reasonable expenses for his attendance. In ordinary warrant-cases, however, the cost of causing the attendance of accused's necessary witness is usually borne by Government.

COMMENTS

The Magistrate requiring the accused to pay reasonable expenses likely to be incurred by the witness in attending to Court under Sub-section (3) of Section 243 Criminal Procedure Code should state the reasons and not act as a matter of routine. He should consider the provisions under Section 312 of the Code and Rr/ad. 14 of Vol. Ill of Rules and Order of Punjab High Court. These provisions indicate that the accused should be asked to deposit the costs only in exceptional circumstances where the witness was being called to cause vexation of delay or for defeating the ends of justice. Normally the Government should meet the expenses. *Surinder Kumar v. State,* 1982 Cr. L.J. 548.

15. Cost of adjournment—The attention of Criminal Courts is drawn to 20 P.R. 1904 (Cr) in which it was held that the expression 'on such terms as it thinks fit' in Section 344 (1A) of the Code gives the Court power to award cost for an adjournment to the party to whom loss is caused by such adjournment. In exceptional circumstances when the accused is clearly at fault he may be ordered to pay costs (*1953 Cr. L.J. 1479 and I.L.R. (1945) 1-Cal. 481*), but generally when proceedings can be taken against him for the forfeiture of his bail bond for non-attendance on any hearing it would be improper to expose him also to a different penalty for payment of complainant's costs (*AIR 1948 Cal. 194*).

The provisions, of Section 344 [now Section 309(1) (2) of Code] enabling a trial Court to order costs for an adjournment are not applicable to Courts of appeal or revision (*1952 A.L.J. 614*).

COMMENTS

The words "on such terms as it thinks fit" in Section 344 of the Code of Criminal Procedure are wide enough to include an order for cost. If, however, the Magistrate has no discretion in the matter and has no power to refuse the adjournment, costs cannot be awarded.

Thus, when an accused applied for an adjournment because he was ill, the Magistrate having no option but to adjourn the case, although he might issue a warrant of arrest against the accused, an order of cost to be paid by the accused to the complainant was not legal. *Ichab Shaikh vs. Kshirode Kumar Ghosh,* (1945) I.L.R. I Cal. 481. (*Beedha vs. Emperor,* AIR 1922 All. 184, and *Gulab Singh vs. Inder Singh,* AIR 1934 Lah. 441, followed.)

16. Finding and sentence—At the conclusion of the trial the Magistrate must record his finding and, in case of conviction, pass a legal sentence.

(d) Procedure in the trial of other warrant cases

17. Other warrant cases—In warrant cases instituted otherwise than on a police report, when the accused appears or is brought before the Court, the Magistrate must at once proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution.

The Magistrate is further required to ascertain 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 must summon such persons and take their evidence. The absence of the complainant, where there is one, does not effect the proceedings except in a case instituted upon complaint which may be lawfully compounded, and the Court can compel his attendance, if necessary. Thus, in a warrant case it is the duty of the Magistrate to cause the production before him of all material evidence for the prosecution, and to hear it. In the exception above alluded to, the Magistrate has power to discharge the accused on the complainant making default.

18. Discharge of accused—After taking the evidence and making such examination of the accused as he may think necessary, if no case is made out which, if unrebutted, would warrant a conviction, the Magistrate should discharge the accused, and record his reasons doing so.

If, however, at any previous stage of the case the Magistrate considers the charge to be groundless, he may record his reasons for that opinion, and discharge the accused.

19. Framing of charge—If a *prima facie* case is made out which the Magistrate is competent to try and which he considers could be adequately punished by him, he should frame a charge. The instructions with regard to the framing of a charge in paragraph 9 above would apply in this case also. If the Magistrate is not competent to try the case made out or considers that he cannot adequately punish the accused if convicted he should proceed as already indicated in paragraph 8 above.

20. Pleading to charge—The charge should be read out, and explained to the accused, and he should be asked to plead to it. If the accused refuses to plead or pleads not guilty he should be required to state at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken before the framing of the charge. If he does so wish, the Magistrate should proceed as directed by Section 256 of the Code.

21. Procedure in later stages the same—After this stage the procedure for the trial would be very much the same as in a warrant case instituted on police report. In this connection please see Sections 252 to 259 (now Section 278 and 279 of new Code).

(e) Summary trials

22. Summary trials—Summary trials can be held only by a District Magistrate or a Magistrate of the first class empowered in that behalf, or a Bench of Magistrates empowered under either Section 260 or Section 261 of the Code (now Section 278 or 279 of new Code). For detailed instructions on the subject see Chapter 2 relating to summary trials.

(f) Inquiries by Magistrates in cases triable by the Court of Sessions or High Court, when instituted on police report.

23. Procedure in inquiries by Committing Magistrate in Sessions cases—The procedure in inquiries preparatory to commitment of a case instituted on police report, when the case triable by a Court of Sessions, is given in Section 207-A of the Code. At the commencement of the

inquiry when the accused appears or is brought before the Magistrate, he shall satisfy himself that the accused has been furnished the documents mentioned in Section 173. If this has not been done he shall, subject to the provisions of Sub-section (5) of Section 173 [now Section 173(7) of new Code], cause these documents to be furnished to the accused. The Magistrate shall then proceed to record the evidence of persons produced by the prosecution as witnesses to the actual commission of the offence alleged and if of opinion that it is in the interest of justice, may record the evidence of any other prosecution witnesses also. After examining the accused, the evidence recorded and the documents and after hearing the parties as provided in sub-section (6), if the Magistrate finds that a *prima facie* case triable by a Sessions Court is made out he shall frame a charge, copy of which shall be supplied, free of cost, to the accused. The accused is not asked to plead to the charge but is merely required to give a list of persons, if any, whom he wishes to be summoned to give evidence in his defence. Sub-sections (8) and 9 of Section 207-A (no equivalent provisions in new Code).

For detailed instructions on the subject see Part A of Chapter 24, relating to Sessions trials.

(g) Inquiries in Sessions cases instituted otherwise than on police report

24. Procedure in inquiries by Committing Magistrates in Sessions cases—The procedure in inquiries by Magistrates into cases triable by Sessions Court, when the case is instituted otherwise than on a police report, is practically the same as in warrant cases similarly, (Vide, Sections 208 to 220) (no equivalent provision in new Code), but when *a prima facie* case is made out, a charge is framed and the case committed. The accused is not asked to plead to the charge but is merely required to give a list of persons, if any, whom he wishes to summon to give evidence in his defence. (Sections 210 and 211 no equivalent provision in new Code).

For further instructions on the subject see Part A of Chapter 24 relating to Sessions trials.

(h) Miscellaneous matters

25. Insane persons—Directions for the conduct of cases when—

(a) the Magistrate has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind, or

(b) when the accused appears to be of sound mind at the time of inquiry or trial, but the Magistrate finds reason to believe that he committed an act while he was of unsound mind, which, but for such unsoundness, would be an offence, will be found in Chapter 17 ‘Lunatics’.

26. Procedure when the accused cannot be made to understand the proceedings—(i) If the accused, though not insane, cannot be made to understand the proceedings, as in the case of persons who are deaf and dumb, the Magistrate should proceed with the inquiry, and, in cases triable by the Court of Sessions or High Court, if a *prima facie* case is made out, should commit the accused for trial. In cases, triable by the Magistrate himself, the trial should be proceeded with and a finding come to as to the guilt or innocence of the accused person. If the accused is committed or convicted, the proceedings should be forwarded to the High Court with a report of

the circumstances of the case, for such orders as such Court may deem fit to pass (Section 341 of the Code) (now Section 318 of new Code).

(ii) The Magistrate is not authorised to stay proceedings until he has heard the whole of the evidence for the prosecution, and has come to a conclusion as to the innocence or guilt of the accused person. If a *prima facie* case is not established the accused will be discharged. If a *prima facie is* established the Magistrate will make an order of commitment or conviction (as the case may be) and then report the case.

27. Stating the case—In all cases in which the public prosecutor or a member of the police prosecuting staff appears on behalf of the State in the Magisterial Courts, the presiding officer should call on him, at the beginning of the trial, to state briefly the facts of the prosecution case.

Part E
RECORD OF EVIDENCE IN CRIMINAL CASES

1. Only relevant evidence should be recorded—In recording evidence, Magistrates should take care to see that it is relevant and admissible under the provisions of the Indian Evidence Act. If any objection is raised as to the admissibility of any evidence, the Magistrate should endeavour to decide it forthwith and the particular piece of evidence objected to, the objection and the decision thereon should be clearly recorded.

2. Duty of Court to elucidate facts—Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917 a Judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The vide powers given to the Court by Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure should be judiciously utilised for this purpose when necessary.

3. Mode of recording evidence—The manner in which evidence is to be taken down by the Presiding Magistrate or Judge in inquiries and trials is prescribed in Sections 355 and 356 *[see* Sections 274(1)(2), 275(1) to (4) 276(1); Proviso to 277 to 277(2)(c) of new Code]. In cases falling under Section 355 [*see* Section 274(1)(2) of new Code], the presiding officer is required only to record a memorandum of the substance of the evidence, while in those falling under Section 356, the evidence must be recorded in full. In view of the recent amendment of Section 356 [now Section 275(1) to (4) of new Code] the Court of Sessions or the Magistrate may, in proceedings mentioned in that section, take down the evidence in writing in the language of the Court either in his own hand or cause it to be taken down from his dictation in open Court. The evidence so taken down shall be signed by the presiding officer and shall form part of the record. If the evidence is not taken down by the presiding officer in his own hand or caused to be taken down from his dictation in open Court, but is recorded in any of the other manners laid down in Section 356 Section (1) [now *see* Section 275(1) to (4) of new Code], then, as the examination of each witness proceeds, the presiding officer shall make a memorandum of the substance of what the witness deposes in his own hand; if the presiding officer is prevented from making such a

memorandum he shall record his reasons in writing. On the other hand, in cases falling under Section 355 also the Magistrate may record the evidence in full if he thinks it fit to do so *(e.g.,* when the evidence is very important or when, there is possibility of the witness being prosecuted for perjury, etc), *vide*—Section 358, Where the presiding officer is unable to record a memorandum of the substance of the evidence as required by Section 355 or 356, he must record the reasons of his inability to do so, and in cases falling under Section 355 *[see* Section 274(1)(2), of new Code] must have the memorandum recorded by dictation in open Court.

4. Comparison of memorandum with vernacular statement—An omission to record the memorandum referred to above cannot be justified except under circumstances which render it impossible for the Magistrate to record it. Want of time cannot be accepted as a valid excuse. In these cases the Magistrate should be careful to follow the deposition of each witness, when it is read over to him in the vernacular in accordance with Section 360 of the Code of Criminal Procedure (Section 278 of new Code) and observe whether his memorandum is in conformity therewith. Any apparent discrepancy between the vernacular statement and the English memorandum should be explained in a note by the Magistrate under the memorandum. Considerable differences are often found between the English and vernacular records owing to a neglect to put these instructions into practice.

5. English record—The High Court expects every Sessions Judge, District Magistrate and Magistrate exercising powers under Section 30 of the Code to be above to cause the evidence of each witness as it proceeds to be taken down in writing from his dictation in open Court. Where it is necessary to make a memorandum of the evidence, it should be kept in English and be as full as possible. Magistrates are not considered eligible for enhanced powers under Section 30 unless they are able to keep a proper record in English.

6. Evidence to be taken down in full—Sessions Judges and Magistrates of Districts should see that the procedure above prescribed is followed strictly, and that in all criminal cases tried by Magistrates the evidence is taken down in full by the Magistrate who tries the case, where he is required to do so by law.

7. Statement of a witness to be read over—The statement of a witness must be read over to him in the presence of the accused, if in attendance, or of his pleader and corrected if necessary according to the provisions of Section 360 of the Code. In this connection please see I.L.R., 1927 Rangoon 53 (P.C.) AIR 1927 PC 44.

COMMENTS

The appellant was tried by a District Magistrate and convicted. At the trial the depositions of witnesses were read over to them while the case otherwise proceeded, and the depositions of some of the witnesses were handed to them to read to themselves. The Code of Criminal Procedure provides by section 360 that the deposition of each witness should be read over to him in the presence of the accused or his pleader. The High Court confirmed the conviction holding that the course pursued was merely an irregularity within section 537 of the Code, and that as no failure of justice had been occasioned that section saved the conviction from being vitiated. No objection had been taken at the trial and no inaccuracy in the depositions was suggested. The Judicial Committee granted special leave to appeal.

Held, that as there had been no actual or possible failure of justice the appeal failed whether the sections of the Code had or had not been properly applied. According to the well established practice of the Privy Council appeals in criminal cases are allowed only when it was shown that substantial and grave injustice had been done; the granting of special leave does not relieve an appellant of showing that that is the case. *Abdul Rahman v. The King-Emperor,* (1927) I.L.R. V Rang. 53. (*In re Dillet,* (1887) 12

App. Cas. 459, and *Arnold v. King-Emperor,* (1914) 41 I.A. 149 followed.) (*Subramania Iyer vs. The King-Emperor,* (1901) 28 I.A. 257 —distinguished.)

Reading over of depositions to witnesses while the case was otherwise proceeding was not a violation of section 360 of the Code, the object of reading over being to secure an accurate record from the witness of what he meant to say, not to enable the accused or his pleader to suggest corrections; it was however better that depositions, unless merely formal, should be read over so that the accused or his pleader could give their undivided attention to the matter, (b) that the giving of depositions to witnesses to read to themselves was rightly treated by the High Court as an irregularity curable under section 537 of the Code. *Abdul Rahman vs. The King-Emperor,* (1927) I.L.R. V Rang. 53. (*Hira Lal Ghose vs. Emperor,* (1924) I.L.R. 52 Cal. 159, and *Dargahi vs. Emperor,* (1924) I.L.R. 52 Cal. 499—disapproved.)

In Section 537 of the Code the passage beginning "unless such error" qualifies each of the clauses which precede it, not merely clause (d), though it is so printed in Government publications.

No serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused.

Held, further, that the Magistrate in formulating against the appellant, after hearing the evidence, a new charge in place of one originally framed, was acting under clause (a), not clause (c), of section 190, sub-section 1 of the Code; Consequently section 191 did not apply, and it was not necessary to inform the appellant that he had a right to be tried by another Court. *Abdul Rahman vs. The King-Emperor,* (1927) I.L.R. V Rang. 53. (*Emperor vs. Chedi,* (1905) I.L.R. 28 All. 212—distinguished.)

8. Evidence and judgments in summary trials—In those summary cases in which an appeal would not lie no evidence need be recorded; but the Magistrate should record the particulars mentioned in Section 263 of the Code in the register prescribed for the purpose. But in summary cases in which an appeal would lie the Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in Section 263 and shall before passing any sentence, record a judgment in the case (Section 264).

9. Particulars of witnesses or parties to be noted—Care should be taken to record the parentage, age, place of residence, and, except in the case of converts to Christianity, caste of parties and witnesses. At the request of the Punjab Government, judicial officers are directed to refrain in all judicial proceedings from adding any caste designation to the names of known converts to Christianity, unless such designation be absolutely necessary for the identification of the party referred to. When a person is known by two names, or his precise name is doubtful, both should be given or the doubt cleared up. It should also be noted whether a witness is called by the prosecution, or by the defence, or by the Court.

10. Cross-examination and re-examination to be distinguished by a note in the margin—Care should be taken to distinguish the cross-examination and re-examination of witnesses by a note in the margin. If a witness is not cross-examined the record should show that the accused did not wish to do so.

11. Illegible record—The memoranda of evidence, the depositions or statements should be carefully written in a legible manner. In cases forwarded to the High Court, in which from any cause the memoranda or depositions in question, or the final judgments have been indistinctly or illegibly recorded, copies of such memoranda, depositions and judgments should be submitted with the record of the case.

12. Documents on record should be duly proved—(i) Care should be taken to see that all documents placed on the record, for example, the first information report, plan of the spot,

medical certificates etc. are duly proved. As regards special rules of evidence please see Chapter XLI of the Code. Section 510 *(see* Section 292 of new Code) has been amended by Act 26 of 1955 and now besides the reports of the Chemical examiners, the reports of the Chief Inspector of Explosives, the Director of Finger Print Bureau or an officer of the Mint upon any matter or thing duly submitted to any of them for examination or analysis may be used as evidence in any proceeding under the Code. The Court may, and if so required by any party shall, summon and examine any such officers as to the subject matter of the report.

(ii) *Evidence on affidavits*—In view of the new Section 510-A *(see* Section 296 of new Code) evidence of a formal character may be given by affidavits, and subject to all just exceptions be read as evidence in proceedings under the Code. Here again the Court may, and if so required by any party, shall, examine the deponent as to the facts contained in his affidavit.

13. Demeanour of witnesses—Magistrates should not omit to make a note about the demeanour of a witness when such demeanour is noteworthy and affects their estimate of the value of the evidence given by the witness. [Section 363 (see Section 280 of new Code)].

14. Record to contain a brief note of all material orders passed—Each record or memorandum of evidence should be dated and the record of a case made by a Magistrate or Sessions Judge should not only contain depositions or memoranda of evidence, according as the evidence is or is not recorded by him in full, but also, in its proper place, a short note of every material order made during the inquiry or trial, with the date on which such order was made. Every order of adjournment must be entered, and the date on which the inquiry was resumed should be apparent.

Orders to be written by the Magistrate in his own hand—All notes and orders recorded by Presiding Officer *(e.g.,* orders of adjournment, notes regarding the presence of witnesses) other than depositions, orders deciding any matter in dispute and the final judgment, should be written by the Presiding Officer *in his own handwriting* or from his dictation and signed and dated and appended to the record. Each 'order' or 'note' should be clearly marked as such.

Notification *re*, Court language—Punjab Government Notification No. 103, dated the 3rd February, 1883.

Under the provisions of Section 556 of Act X of 1882 (the Code of Criminal Procedure, Section 558, Code of 1898,) the Governor is pleased to declare that Urdu shall be deemed to be the language of the Criminal Courts within the territories administered by the Punjab Government.

Note 1—The language of the High Court is English. (Vide Punjab Government Notification No. 316 : G dated the 18th January, 1906).

Note 2—The adoption of Hindi and/or Punjabi as the Court language is under the consideration of the Punjab Government. (Vide, Punjab Government circular Letter No. 662-(C)-H-55/2375, dated the 24th January, 1955).

Part F
DISMISSAL OF CASES IN DEFAULT

1. Inclination to dismiss cases in default. Some Magistrates are inclined to dismiss cases in default hastily.

2. Reasons for dismissal in default should be recorded—Before a case is dismissed by reason of the absence of complainant, the Magistrates should carefully consider—

(a) whether such an order is legal; and

(b) whether it is justified by the circumstances.

In view of the proviso added to Section 247 of the Code by Act 26 of 1955, even in summons cases the Magistrate can proceed with the case on complainant's failure to attend when he considers that complainant's personal attendance is not necessary.

Reasons should always be recorded where a case is dismissed in default.

3. Instructions to be observed in redismissal of complaints, etc., by reason of the absence of the complainant—(i) In applications for revision of orders dismissing complaints or cases instituted on complaint, by reason of the absence of the complainant, it is frequently urged—

(a) that the complainant was not called;

(b) that the case was dismissed very early in the day; or

(c) that the Magistrates being on tour, the complainant had no, or insufficient, notice of the place of sitting.

(ii) The Magistrates records often furnish no definite information on any of these points. The following instructions are accordingly issued for guidance to subordinate Courts—

(a) Magistrate should not dismiss complaints or cases instituted on complaint without giving complainants full opportunity for appearance. Ordinarily, of a complainant is absent when his case is first called on, his case should be called on again later, and the time of dismissal should always be noted on the record.

(b) When the Magistrate is on tour, complaints or cases instituted on complaint should not be dismissed unless the complainant has had due notice of the place of hearing.

(c) In carrying out these instructions Magistrates should bear in mind that if a summons-case in which a summons has been issued, is dismissed on account of the absence of the complainant the accused must be acquitted, unless the Magistrate decides to proceed with the case under the proviso recently added to Section 247 of Code. A warrant-case, in which proceedings have been

instituted on complaint, can only be dismissed in the absence of the complainant, if the offence is one that can lawfully be compounded, or is not a cognizable offence. In the latter case the Magistrate may, in his discretion, discharge the accused at any time before a charge has been framed, under Section 259 of the Code of Criminal Procedure. If the offence is congnizable or is one that cannot lawfully be compounded, the Magistrate is bound to proceed with the case and decide it on its merits.

(d) Section 247 of the Code of Criminal Procedure *(see* Section 256 of new Code) does not apply when the entire evidence in a case has been concluded and the case has been adjourned only for judgment without the attendance of the complainant having been specially directed.

COMMENTS

The order of the Magistrate dismissing the complaint in default in the early hours of the day and not allowing the complainant an opportunity to appear in the later part of the day was against the directions of the High Court in Rule 3(ii) (a) Chapter 1-F of Vol. III *Kishan Dass* v. *Manohar Lal,* 66 (1964) PLR 71 and *Gurdial Singh* v. *Gyani Kamal Singh,* 76 (1974) PLR 315.

The obvious intention or object in framing this rule and issuing instructions embodied in it for guidance to subordinate Courts is to ensure that the complainant has had full opportunity for appearance and that the Magistrate does not dispose of the complaint in a manner which may result in injustice. *Prabh Dayal Govind Ram* v. *R. Mudgil,* AIR 1966 Punjab 372.

Part G
MISCELLANEOUS MATTERS IN CONNECTION WITH INQUIRIES AND TRIALS

(a) Age of accused persons, complainants and witnesses to be carefully considered when the point is material

In Criminal cases, in which the age of an accused person, complaint or witnesses, is material to the matter in issue, or is likely to affect the sentence, the Court should record a careful finding as to probable age of such accused person, complainant or witness, and should refer to, and comment on, any discrepancies which there may be in the evidence on the point. In cases of doubt, the opinion of a medical officer should be taken. The age of the accused as found or believed by the Court should be invariably stated in the judgment. A careful statement of the probable age of the accused is especially necessary in murder cases in which the person charged is a youth or is very advanced in years. But in every case in which a charge is framed the accused should, at the opening of his examination, be required to state his age; and in all cases in which the age of the accused appears to the Court to be under twenty or over fifty years, or to be material for any special reason, the Magistrate should add a note expressing his own opinion as to the probable age of the accused.

Note—It has been brought to the notice of the High Court that owing to insufficient inquiry into the age of juvenile offenders youths of too advanced age are not infrequently sent to the Reformatory School. The Judges, therefore, invite the attention of all Magistrates to the necessity of exercising care in the preliminary inquiry into the age prescribed in Section II of the Reformatory Schools Act of 1897 and to the propriety of taking medical advice in doubtful cases.

(b) Medical examination of persons for purposes of evidence

Neither the complainant, nor a witness nor an accused person can be compelled to submit to medical examination for the purposes of evidence. A criminal Court has by law no power to order any person, whether male or female, to be subjected to medical examination, though, where the consent of the person to be examined (or in the case of a minor, of his or her lawful guardian) has been obtained, such examination may be authorised. The practice of ordering the medical examination of a women who has complained of an offence against her virtue is illegal without her consent.

(c) Distinction between cases of Assault and Hurt

1. It has come to notice that junior Magistrates are apt to confuse Sections 352 and 323 of the Indian Code and to issue process and convict under the former section in cases in which the complaint is laid under Section 323, and the evidence prosecution establishes that fact of violence having been actually used.

2. In view of the amendment of the definition of a 'warrant-case' both cases would now be triable as a summons-case. The Magistrates should not, therefore, be led away by the impression that they must have to follow a complicated procedure if an offence under Section 323 of the Indian Penal Code is made out against the accused.

3. Section 352 of the Indian Penal Code would not apply to cases where the offender uses criminal force which actually causes hurt to a person. Such cases would fall under Section 323 of the said Code.

4. It has been ruled that Section 304-A is inapplicable to cases in which an assault, however petty, is deliberately made, and death ensues. Such cases fall either under Section 302, Section 304, or Section 325 or Section 323.

(d) Death of complainant

Criminal proceedings once instituted whether upon a complaint or otherwise do not terminate or abate merely by reason of the death of the complainant or person injured (See 2 I.L.R. Lahore 27).

(e) Exhibits

(i) Sessions Judges and Magistrates should ordinarily pass orders under Section 517 (1) of the Code of Criminal Procedure for the disposal of exhibits on the conclusion of the trial. The time at which such an order is to be carried out is governed by Sub-sections (3) and (4) of Section 517 of the Code of Criminal Procedure. The order remains in force, unless it is modified, altered or annulled under Section 520 of the Code of Criminal Procedure. If such orders are made on the conclusion of the trial, the inconvenience of giving directions at a later time, when the matter is no longer fresh in the mind of the Court, and the possibility of a legal difficulty in making orders long after the conclusion of the trial will be avoided.

(ii) Instructions relating to the sending of exhibits to the High Court in Sessions cases are contained in paragraphs 47, 48 and 49 of Chapter 24-B, of this volume. In respect to magisterial cases, exhibits, other than documentary exhibits should not be sent to the High Court, unless the High Court calls for them, or unless the Magistrate considers that a particular exhibit will be required in the High Court, in which case he should record a note at the foot of his judgment that the exhibit should be forwarded to the High Court in the event of an appeal or revision to the High Court.

Part H
THE JUDGMENT

1. (i) *Content of a judgment*-—In all cases a judgment must be drawn up containing (1) the point or points for determination (2) the decision thereon, and (3) the reasons for the decision. In case of a conviction, the offence, the law applicable and the punishment awarded, must be entered in the judgment. In case of acquittal, the offence must be specified and (if the accused is in confinement) a direction given that be set at liberty. When there are more than one accused the case of each should be dealt with separately.

(ii) *Judgment should be dated, signed and pronounced of the accused*—The judgment should be written in the language of the Court in English; it should be pronounced in open Court, and dated and signed by the presiding officer at the time it is pronounced. Except where the' attendance of the accused has been dispensed with during the trial and the sentence to be passed is one of fine only or when the judgment is one judgment is one of acquittal the accused should be in attendance when judgment is pronounced. No Court has power to alter or review a judgment once signed except for the purpose of correcting a clerical error, or for the purpose of revising a sentence of whipping under Sections 394 and 395 of the Code.

(iii) *Judgments not written by the Magistrate*—When the judgment is not written by the presiding officer with his own hand every page of it shall be signed by him.

(iv) *Pronouncement of judgment before a spell of holidays*—All cases in which an accused person is likely to be convicted and sentenced to imprisonment before a spell of four or more holidays should be decided at least two days before the commencement of the holidays and arrangements should be made for supply, free of cost, of copies in such cases forthwith to the person convicted to enable him to apply for bail before the commencement of the holidays.

(v) *Judgment not to be written at home*—Magistrate should not write judgment at their houses during Court hours even though they have no cases fixed for hearing.

(vi) *Copy to be supplied to accused free of costs in some cases*—The judgment must be explained to the accused. In view of sub-section (4) of Section 371 *[see* Section 363(1) of new Code] whenever an accused person is sentenced to imprisonment then, without prejudice to the provisions of sub-section (1) and (2) of that Section, a copy of the finding and sentence shall be given to the accused, free of cost, soon after the delivery of the judgment.

(vii) *Accused sentenced to death to be informed about the right and period of appeal*—When the accused is sentenced to death and an appeal lies the Court should inform the accused of the period within which, if he wishes to appeal should be preferred.

(viii) *Numbering of paragraphs*—The paragraphs of a judgment should be serially numbered to facilitate references.

(ix) *Sentence*—The question of sentence requires careful consideration in each case. The presiding officer should see that the sentence passed is legal and appropriate. For detailed instructions on the subject see Chapter 19, Sentences.

2. Criminal powers of the Courts should be noted in the record and final order—Every judicial Officer hearing, conducting or deciding a criminal proceeding, trial or appeal is reasonable that the record and the final order in such criminal proceedings, trial or appeal shall disclose the criminal powers which such officer exercised in hearing or deciding such proceeding, trial or appeal.

3. Powers of various criminal Courts—The powers referred to in the above rule are the following—

(a) Magistrate, third class.

(b) Magistrate, second class.

(c) Magistrate, first class.

(d) Magistrate, empowered under Section 30 of the Code of Criminal Procedure.

(e) Additional District Magistrate.

(f) District Magistrate.

(g) Additional Sessions Judge.

(h) Assistant Sessions Judge.

(i) Sessions Judge.

(j) Special Judge appointed under the Criminal Law Amendment Act, 1952 (XLVI of 1952).

(k) Special Magistrates of first, second or third class. (1) Bench of Magistrates, first, second or third class.

4. Special powers to be noted in the record and final order—When an officer exercises powers specially, conferred, for example, the power to try cases summarily, or the power to pass sentences of whipping in the case of a Magistrate of the second class, the record and final order

in any criminal proceeding or trial shall disclose the fact that such officer is specially empowered in that behalf.

5. Separate judgments in riot cases—In riot cases in which members of opposite factions are separately tried, separate judgments should be recorded, (For detailed instructions *see* Chapter 4, Trial of Riot Cases).

6. Criticism on the conduct of Police and other officers—It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of illusage is readily accepted as true. That such allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and every thing against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936.

Award of Compensation and Costs

7. Award of costs—Certain of the costs incurred by a complainant in a complaint of a non-cognizable offence may be recovered from a convicted accused in the manner provided in Section 546-A of the Code. The costs incurred in enforcing an order of a Magistrate for the removal of a nuisance may be recovered from the person against whom the order made in the event of his disobeying the order. [Section 140 (2)]. The costs incurred by any party in the proceedings relating to dispute as the immovable property under Chapter XII of the Code, may be awarded to him against any other party by the Magistrate. [Section 148 (3)] and may be realised as if the amount awarded was a fine. [Section 547 *(see* Section 431 of new Code)]. The costs incurred in proceedings under Sections 87 to 89 *(see* Section 82-85 of new Code) of the Code, in dealing with the property of persons absconding to avoid process, may be recovered from such property. (Section 89) [*see* Section 85 (3) of new Code].

8. Application of fine towards costs and compensation—When a fine is imposed by a criminal Court, the Court may order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for any loss or injury caused by the offence committed; where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

(bb) in compensating the heirs of a person whose death has been caused by the offence tried when such heirs are entitled to recover damages under the Fatal Accidents Act, 1855, from the person convicted for the commission or abetment of the offence.

(c) in compensating a *bona fide* purchaser of stolen property (Section 545) *[see* Section 357 (1)(2) of new Code].

Compensation not to be paid until appeal is decided—If the fine is imposed in a case which is subject to appeal, the compensation must not be paid away until the period for appeal has elapsed, or if an appeal is presented, before it is decided. Cases have occurred when the lower Court has paid the compensation in ignorance of the fact that an appeal has been lodged and later on when on appeal the amount has been reduced or remitted, it has become impossible to obtain a refund from the complainants. Therefore, the lower Courts should not pay compensation to the complainant until they are satisfied by examining the records of the case and making a reference to the appellate Court that no appeal or revision has been lodged. Compensation so awarded must be taken into account in any subsequent civil suit relating to the same matter (Sections 545 and 546 of the Code) [*see* Section 357(l)(2)(5) of new Code].

9. Award of compensation to accused—(i) In the case of any offence triable by a Magistrate and instituted upon complaint or upon information given to a Police officer or to a Magistrate, if the Court discharges or acquits all or any of the accused and is to opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court, by its order of discharge or acquittal, (a) if the complainant or informant is present, may call upon him forthwith to show cause why he should not pay compensation to such or each of such accused, or (b) if he is not present, may direct the issue of a summons to him to appear and to show cause.

(ii) After recording and considering any cause, which may be shown, the Magistrate if satisfied that the accusation was of the character aforesaid, may, for reasons to be recorded, direct the complainant or informant to pay to the accused or to each or any of them compensation not exceeding one half of the amount of fine that the Magistrate is empowered to impose.

(iii) Simple imprisonment not exceeding thirty days may also be ordered in default of payment. An order for payment of such compensation shall not exempt the complainant or informant from any civil or criminal liability incurred by him by reason of his complaint or information, but any amount paid in obedience to such order must be taken into account in any subsequent civil suit relating to the matter.

(iv) An appeal is provided for in cases where the order is by a Magistrate of the second or third class and where any other Magistrate has ordered the payment to compensation exceeding Rs. 50. Where no appeal lies the amount of compensation shall not be paid to the accused person or persons until the expiration of one month from the date of the order. In other cases it shall not be paid until the period allowed for appeal has elapsed or the appeal has been decided. (Section 250 of the Code as amended by Act 26 of 1955).

(v) If this provision of the law is enforced with discretion, it may be expected largely to reduce the number of groundless and frivolous complaints filed. In fixing the amount of compensation

awarded, the Court should be careful to consider the position of the accused as well as that of the complainant. Excessive amounts should not be awarded.

Compounding of offences

10. Acquittal of accused when offence is compounded—The compounding of an offence under Section 345 of the Code of Criminal Procedure, *see* Section 520 of Law Code with or without the permission of the Court, has the effect of an acquittal. In such cases, no judgment on facts is needed, but the statement of all the parties concerned must be recorded and in cases where permission of the Court is necessary for compounding the offence the reasons for granting permission should be stated in the acquittal of the accused.

Act 26 of 1955 has added certain offences to the table given in Section 345 (2) of the Code *(see* Section 320 of new Code) so that a much larger number of offences can now be compounded with the permission of the Court. Thefts and Criminal breaches of trust of property of a value not exceeding rupees two hundred and fifty and fraudulent executions of deeds and dispositions of property to save it from creditors or for other ulterior purposes and mischiefs to cattle and animals where the value is small and certain other offences may now be compounded with the Court's permission.

11. Compounding cases of grievous hurt should be discouraged—There is a growing tendency to allow cases of grievous hurt to be compounded, and from inquiries made it appears that in most Districts Magistrates are too prone to allow cases of the kind enumerated in Section 345(2) of the Code of Criminal Procedure [*see* Section 320 of new Code] to be compounded, when the complainant asks for it. In some instances this may be due to ignorance of the fact that the law allows the Courts discretion to grant or refuse permission to compound, but there are indications that it is sometimes due to the desire of Magistrates to get the cases disposed of as quickly as possible. The effect of this practice must clearly be bad, and in districts where the people are naturally turbulent and addicted to settling their disputes by force, it must encourage crimes of violence.

12. Points to be considered before a compromise is permitted—The facts of each case require careful consideration before a compromise is permitted. In particular, the following points should be considered :—

(a) Whether the assault was premeditate.

(b) Whether it was provoked in any may by the complainant.

(c) The nature and extent of the injury inflicted.

(d) The nature of the weapon or means used.

(e) Whether the compromise is the result of a genuine reconciliation, or caused by undue pressure on the complainant.

(f) The relationship, if any, between the parties.

(g) The extent to which violent crime is prevalent in the locality.

In districts where crime of violence are common, the interests of society demand that permission to compound should ordinarily be refused when serious injury has been caused, and a deterrent sentence of imprisonment should be awarded, except when the assault has been provoked by any act of the person injured. In every case in which a Magistrate allows the parties to compromise, his reason should be recorded in his order.

1. Not applicable to Delhi.

2. Not applicable to Delhi.