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978-1-108-04615-2 - The Code of Criminal Procedure Relating to Procedure in the Criminal Courts of British India: With Notes Containing the Opinions Delivered by all the Superior Local Courts

H.T. Prinsep

Excerpt

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ACT No. XXV. OF 1861.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

*(Received the assent of the Governor-General on the 5th of September, 1861.)**An Act for simplifying the Procedure of the Courts of Criminal Judicature not established by Royal Charter.*

WHEREAS it is expedient to simplify the Procedure of the Courts of Criminal Judicature not established by Royal Charter; It is enacted as follows:—

1. This Act shall be called the Code of Criminal Procedure.

CHAPTER I.—SS. 2—20.

OF DEFINITIONS.

2. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction.

3. The words "British India" shall denote the territories that are or shall become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

4. The words "special law" shall denote a law applicable to a particular subject.

5. The words "local law" shall denote a law applicable only to a particular part of British India.*

* S. 3, ante.

CH. I.
SS. 6—12.

6. The words “moveable property” shall include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

Ss. 4, 5, 6 repeat the definitions contained in Ss. 41, 42, 22, Penal Code.

All moveable property of every description is included in this definition, provided that it is “corporeal.” This word is employed to exclude such property as has no existence, except in the shape of a claim or contract, or right to receive money, &c. A man’s household furniture is moveable property within this explanation, but when he has sold it, the money due to him from the purchaser is not: nor will the promissory note which he has chosen by way of payment be so.—Morgan and Macpherson’s Penal Code, p. 21.

7. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Number.

8. Words importing the masculine gender shall include the feminine.

Gender.

9. The words “enquired into” shall be deemed to comprise every proceeding preliminary to trial; and the word “determined” to comprise trial, and every subsequent proceeding, including the punishment of the offender.

“Enquired into.”

“Determined.”

Thus, previous to a commitment being made, an offence would be “enquired into.” It would be “determined” by the Court of Session.

10. The word “written” shall include “printed,” “lithographed,” and “engraved.”

“Written.”

11. The words “Criminal Court” shall denote every Judge or Magistrate lawfully exercising jurisdiction in criminal cases, whether for the decision of such cases in the first instance, or on appeal, or for commitment to any other Court or Officer.

“Criminal Court.”

This definition would seem to exclude a Justice of the Peace not being also a Judge or Magistrate. See note to S. 21, *post*.

12. The words “Court of Justice” shall denote a Judge who is empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

“Court of Justice.”

This definition is the same as that in S. 20 of the Indian Penal Code, but the latter renders it more complete by adding the definition of

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the term "Judge." (S. 19.) Unless that definition be followed, instead of the more ordinary signification of the word Judge, great inconvenience may arise. See S. 33 and note. CH. I.
ss. 13—18.

13. The words "Court of Session" shall, subject to the limitation in Section 22, include the Courts of the Assistant Sessions Judges in the Presidency of Bombay.

14. The words "Magistrate of the District" shall mean the Chief Officer charged with the executive administration of a District* in criminal matters, by whatever designation such Officer is called. * S. 18.

Except otherwise specially provided for, all Magistrates and Subordinate Magistrates are subordinate to the Magistrate of the District in which they exercise jurisdiction. S. 23 G, enacted by Act VIII. of 1869.

In some provinces (*e. g.*, the Punjab, Oude, &c.) the Magistrates of Districts are termed Deputy Commissioners: it is to provide for such officers that this Section has been enacted.

The term "Zillah Magistrate," used in the Bombay Regulations, has been held by the High Court to signify only the Magistrate of the District.—*Probhakar Soman*, 3 Bombay 11—(Crown Cases).

The Bombay Government, on 21st May, 1863, notified, under this Section, that "an Assistant Collector in charge of a Collectorate is, and shall be during that time, the Chief Officer charged with the executive administration of the District in Criminal matters." Whether this Notification was, in its general terms, sufficient to legalize the hearing of appeals by an Assistant in charge of a Collectorate was decided by the High Court in the case of *Reg. vs. Bhaishunker Hurriram* (3 Bombay 18, Crown Cases): that Court holding that a special order in each case was not necessary.

15. The word "Magistrate" shall include all persons exercising all or any of the powers of a Magistrate.

Magistrates are of three grades.—(See S. 22.) The term "Magistrate" would refer to any of these Magistrates.

16. The words "the powers of a Magistrate" shall imply the full powers of a Magistrate.

See S. 22 for the definition of the full powers of a Magistrate.

17. The words "any of the powers of a Magistrate" shall denote powers less than the full powers of a Magistrate.

The powers less than the full powers of a Magistrate are exercised by Officers called Subordinate Magistrates. These are described in S. 22.

18. The local jurisdiction of the Magistrate† of a † S. 14.

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CH. I. II. "District." District shall, for the purposes of
 ss. 19, 20. this Act, be deemed a "District;" and the local juris-
 — diction in a particular part of a
 "Division of a District." District vested in a Magistrate,
 other than the Magistrate of the District, shall be deemed
 a "division of a District."

S. 23 D, enacted by Act VIII. of 1869, empowers Local Govern-
 ments to invest any Magistrate with local jurisdiction in a particular part
 of a District, declared by S. 18 to be deemed a division of a District, and
 from time to time to alter the limits of such local jurisdiction.

In Lower Bengal Districts have been subdivided, separate officers
 being put in charge of each division, subject to the general control and
 supervision of the Magistrate of the District. The Government has also
 notified that the Joint Magistrate, or, where there is no Joint Magistrate,
 the Senior Officer exercising the powers of Joint Magistrate, shall be the
 Magistrate in charge of the Sudder or Principal Subdivision of the Dis-
 trict to which he stands appointed.

The late Agra Sudder Court (Cir. 20, 1863) has ruled that certain
 Pergunnahs, in charge of which the Magistrate of a District had placed a
 Subordinate Magistrate, could not be considered as a division of a Dis-
 trict, an order of Government being necessary before such an officer can
 act as a Magistrate in charge of a division of a District.

* s. 3. 19. In any part of British India* to which this
 "Sudder Court." Act shall be extended, under the
 provisions of Section 445, the words "Sudder Court" shall
 denote the highest Criminal Court of appeal or revision in
 such part established.

Thus, in the Lower and North-Western Provinces of Bengal, in
 Madras, and in Bombay, the High Courts are referred to in this Code by
 the term "Sudder Court;" in the Punjab the Chief Court; and in Oude,
 in the Central Provinces, and Mysore, the Judicial Commissioner occupies
 the position of a Sudder Court.

20. Wherever the word "year" or the word
 "Year." "month" is used, it is to be under-
 "Month." stood that the year or the month is
 to be reckoned according to the British Calendar.

CHAPTER II.—SS. 21—42.

OF THE JURISDICTION OF THE CRIMINAL COURTS.

Previous to entering upon the execution of the duties of their office,
 Judicial officers are required to take and subscribe to an oath before such
 persons as the Government may commission to administer it. The forms
 of oaths, which vary slightly in the different Presidencies, are to be found
 in the following Regulations :—

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For Sessions Judges—

Regulation (Bengal) IX of 1793, S. 34 ;
 Regulation (Madras) X of 1816, Appendix 1 ;
 Regulation (Bombay) XIII of 1827, S. 7, Cl. 2.

CH. II.
 ss. 21, 22.

For Magistrates—

Regulations (Bengal) IX of 1793, S. 2, and XVI of 1810, Ss. 2, 5 ;
 Regulation (Madras) IX of 1816, Ss. 3, 5.
 Regulation (Bombay) XIII of 1827, S. 3, Cl. 5.
 By Act XXI. of 1857 the Government is empowered to dispense with this oath, and to substitute for it a declaration in writing to the same effect.

21. The Criminal Courts* of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV. of 1860), or under any special† or local‡ law (except offences which are by any such law made punishable by some other authority therein specially mentioned), and, in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act.

* S. 11.

† S. 4.
‡ S. 5.

According to the terms of this Section, it would seem that the Code of Criminal Procedure would not apply to every case investigated or tried by a Justice of the Peace not being a Magistrate, for such officers are not "Criminal Courts" as defined by Section 11. Such cases would, however, rarely, if ever, occur.

Where an Act declares that certain offences shall be punished by a Magistrate, but is silent as to jurisdiction over other offences, the Bombay High Court has held that they were cognizable only by the Court of Session to which the Magistrate was bound to commit. *Atmaram Waman Bhandaker*, 3 Bombay 8, *Crown cases*; also *Lukshman Balaji*, *Ibid.* 10.

On the other hand, where a special Act (*e. g.*, III. of 1857, *Cattle Trespass Act*) makes no special provision as to the authority by which offences under it can be tried, the same High Court held that a subordinate Magistrate has jurisdiction. *Ganga Kom Mhasu*, 5 Bombay 13, *Crown cases*. His jurisdiction would, however, be limited by the terms of Section 23 of this Code, 8 W. R., 14 C.L.

22. The offences mentioned in the Schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said Schedule, be triable by the Courts specified in Column 7 of the said Schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits (that is to say):—

By what Courts the offences mentioned in the Schedule are triable, and within what limits such Courts may pass sentence.

The third explanatory note to the Schedule declares that a superior Court has jurisdiction over an offence stated to be triable by a Lower

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CH. II. Court; but as regards the powers of Sessions Judges in this respect, the
S. 2. provisions of Section 359 should be borne in mind.

— The Court of Session.* Death (subject to confirmation by the Sudder† Court). Transportation,‡ imprisonment of either description for a period not exceeding fourteen years, including such solitary confinement§ as is authorized by law, or fine to an unlimited amount,|| or both transportation and fine, or imprisonment and fine, in cases in which both punishments are authorized by the Indian Penal Code, in cases in which, according to the Indian Penal Code, forfeiture¶ of property may be adjudged, the Court of Session* may adjudge such forfeiture in addition to the sentence.

* S. 13.
† S. 19.
‡ Ss. 58, 59,
Penal Code.

§ Ss. 73, 74,
Penal Code.
|| S. 63, Penal
Code.

¶ Ss. 61, 62,
Penal Code.
* S. 13.

In the Presidency of Bombay, it shall be lawful for a Sessions Judge to delegate cases for trial by an Assistant Sessions Judge: and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits:—Imprisonment of either description for a term not exceeding seven years (including such solitary confinement as is authorized by law), or fine, or both. If the sentence be one of imprisonment for a term exceeding three years, it shall be passed, subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals against the proceedings of his Assistants, and may confirm and amend (but not so as to enhance), or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate.†

A Sessions Judge cannot, on review, alter a conviction by his Assistant, and pass a reduced sentence. If he thinks that the persons under trial have been improperly convicted of an offence, he should decline to confirm the sentence, and should return the case that the trial may be held on an amended charge. *Reg. vs. Joao Thomesit and others.* 5 Bombay 22, *Crown cases.*

In case of the Sessions Judge being absent or deceased, no arrangement for the discharge of his duties having been made by Government, the Assistant of highest rank on the spot shall take charge of, and conduct the said duties, except that he shall not pass any sentence beyond the extent to which he is authorized in his capacity of Assistant.—Regulation XIII. (Bombay) of 1827, S. 8, Cl. 2.

† S. 15.

‡ Ss. 14, 18.

§ S. 16.

|| *i. e.*, rigorous or simple. † S. 63, Cl. 4, Penal Code.

The Magistrate of the District,‡ or other Officer authorized to exercise the powers§ of a Magistrate. Imprisonment of either description|| not exceeding the term of two years,

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including such solitary confinement* as is authorized by law, or fine to the extent of one thousand Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

CH. II.
S. 22.* Ss. 73, 74,
Penal Code.

Subordinate Magistrates or Officers authorized to exercise any of the powers† of a Magistrate—

† S. 17.

1st Class.—Imprisonment of either description‡ not exceeding six months, or fine not exceeding two hundred Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

Powers of Subordinate
Magistrates, 1st Class.‡ *i. e.*, rigorous
or simple, S. 53,
Cl. 4, Penal
Code.

2nd Class.—Imprisonment of either description§ not exceeding one month, or fine not exceeding fifty Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

2nd Class.

§ *i. e.*, rigorous
or simple, S. 53,
Cl. 4, Penal
Code.

No sentence of solitary confinement, under Section 73 of the Indian Penal Code, shall be passed by any Court inferior to an Officer exercising the powers|| of a Magistrate.

|| *i. e.*, Full
powers, S. 16.

By S. 8, Act VI. of 1864 (Whipping Act) the above-mentioned officers, except Subordinate Magistrates of the 2nd Class, unless expressly empowered by Government, may pass sentences of whipping for certain offences specified in the Act. See Appendix A.

The powers of a Magistrate under any special or local law are not restricted by S. 22, Code of Criminal Procedure. Thus, when under the Excise Law (Act XXI. 1856) a fine of 10 Rupees per seer on the whole quantity of contraband opium found without a licence may be passed by a Magistrate, although it may in the aggregate exceed 1,000 Rupees, it is not illegal.—Suroop Chunder Dutt, 7 W. R., 29.

Section 359 enacts that, except in cases referred to in Section 172 of this Act, a Court of Session as a Court of Original Criminal Jurisdiction shall not take cognizance of any offence, but on a charge preferred by a Magistrate or other officer specially empowered under this Act, or under any other law to make commitment to such Court.

The cases referred to in Section 172 relate to offences committed before a Court of Session, and under its own cognizance, being exclusively triable by it.

Throughout British India, except in the Presidency of Madras, only officers exercising the full powers of a Magistrate, or Subordinate Magistrates specially empowered by Government (S. 34) can make commitments to a Court of Session. In the Presidency of Madras, Subordinate Magistrates of the 1st and 2nd classes have the power of committing to the Court of Session any persons charged with offences triable exclusively by that Court. (S. 356.)

The powers thus given to the several grades of officers, presiding in Criminal Courts, are under certain circumstances enhanced by S. 46, which enacts that, when a person shall be convicted at one time of two or more offences punishable under the same or different Sections of the

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Penal Code, it shall be lawful for the Court to sentence such person for the offences of which he shall have been convicted to the several penalties prescribed by the said Code which such Court is competent to inflict: such penalties to commence the one after the expiration of the other. It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which such Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that in no case shall the person be sentenced to imprisonment for a longer period than fourteen years; and provided also that, if the case be tried by a Magistrate, the punishment shall not, in the aggregate, exceed twice the extent of punishment which such Magistrate is, by his ordinary jurisdiction, competent to inflict.

Police Officers vested with the powers of a Magistrate are to exercise them only in the restricted manner set forth in S. 6, Act V. of 1861. They have no power to punish under the Indian Penal Code.—Jud. Com., Punjab, 31st Jan., 1862.

In the note to S. 29, Act V. of 1861, Appendix D, will be found some important Rulings bearing on the power of a Magistrate over Police Officers.

The powers of Magistrates, with regard to awarding sentences of imprisonment in default of payment of fine, are subject to the following rules:—

The Penal Code draws a distinction between offences for which fine as well as imprisonment may be awarded, and offences for which fine is the only punishment. For the former class of offences, the term of imprisonment in default of payment of fine must “not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence” (S. 65, Penal Code); and, as regards the powers of Magistrates in awarding imprisonment in default of payment of fine for such offences, S. 45, Criminal Procedure, declares that it “shall in no case exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence other than as imprisonment in default of payment of fine.”

For cases regarding offences punishable with fine only, Section 67, Penal Code, regulates the term of the alternative sentence of imprisonment in default of payment of fine, by declaring that it shall not exceed two months when the amount of fine shall not exceed fifty Rupees, four months when the amount shall not exceed one hundred Rupees, and six months in any other case.

By S. 445 A enacted by Act VIII. of 1869, the Governor-General in Council, or the Local Government in any territory to which the Code of Criminal Procedure has been extended, and which is not subject to the General Regulations of Bengal, Madras, and Bombay, may vest the Chief Officer charged with the executive administration in a District in Criminal matters, with power to try all offences not punishable with death, and to pass sentence of imprisonment of either description for a term not exceeding seven years, including such solitary confinement as is authorized by law, or fine, or both.

23. The Local Government may invest any person with the powers* of a Magistrate or of a Subordinate Magistrate of the first or second class, as described

* *i. e.*, full powers, S. 10.

Local Government may invest any person with powers of Magistrate or Subordinate Magistrate.

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in the last preceding Section, with a view to the exercise, by such person, of such powers under this Act or under any special* or local† law.

CH. II.
S. 23.

Under the provisions of Act XXXII. of 1867, the Governor-General in Council has delegated to the Chief Commissioners of Oude, the Central Provinces, and British Burmah, the powers conferred on a Local Government by S. 23, Act XXV. of 1861.—*Gazette of India* of 1867, page 1223, and of 1868, p. 44.

* S. 4.
† S. 5.

The following Sections have been enacted by Act VIII. of 1869, which directs that they shall be inserted in this place:—

23 A. With the sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it may think proper, to any officer under its control, the power conferred by Section 23.

Where a Subordinate Magistrate had been empowered by the Local Government to hear appeals, the Bombay High Court held that that power did not exclude the jurisdiction that the Magistrate of the district had by law, and that where an appeal had been made to the latter from the order of a Magistrate subordinate to him, he was competent to call for the record and pass orders.—Umtha Rugnath, 5 Bombay 8, *Crown cases*.

23 B. When, in consequence of the office of the Magistrate of a District‡ becoming vacant, any officer succeeds temporarily to the chief executive administration of the District§ in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties of the Magistrate of the District.‡

‡ Ss. 14, 18.

§ S. 18.

23 C. The Local Government may, by notification in the official Gazette, prescribe the local jurisdiction of a Magistrate of the District,|| as defined by Section 14, and may by such notification from time to time alter such jurisdiction.

|| Ss. 14, 18.

23 D. The Local Government may invest any Magistrate with the local jurisdiction in a particular part of a District,¶ declared by Section 18 to be deemed a division of a District, and may from time to time alter the limits of such local jurisdiction.

¶ S. 18.

23 E. Whenever any person holding an office in the service of Government, who has been invested with any powers under this

Power to determine local jurisdiction of a Magistrate of a District.
Succession to vacancies in the office of the Magistrate of a District.
Local Government may delegate its power of appointing Magistrates.
Power to appoint Magistrates in charge of divisions of Districts.
Continuance of powers of Officers transferred.

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CH. II. Act in any District,* is transferred to an equal or higher
 SS. 23—26. office of the same nature within another District,* he shall,
 S. 18. unless the Local Government shall otherwise direct, continue to exercise the same powers in the District* to which he is so transferred.

23 F. The Local Government may vary or cancel any powers with which any person may have been invested under this Act.
Powers may be varied or cancelled.

23 G. Except as otherwise provided in this Act or by any other law, for the time being in force, all Magistrates and Subordinate Magistrates shall be subordinate to the Magistrate of the District† in which they exercise jurisdiction.
Subordination of all Magistrates to the Magistrate of the District.

SS. 14, 18.

23 H. The Local Government may, with such limitations as it may think proper, invest any Magistrate‡ in charge of a division of a District, or any officer exercising the full powers of a Magistrate, with the authority conferred on the Magistrate of the District§ by Sections 36, 66, 132, 308, 316, 318.

‡ Ss. 15, 18.

SS. 14, 18.

|| S. 11.

24. The Criminal Courts|| shall have jurisdiction over all persons, except such persons as, by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay, respectively, or by this Act, or any other Act of the Governor-General of India in Council, are, or shall be, exempted from their jurisdiction.
Criminal Courts to have jurisdiction over all persons, except persons expressly exempted.

Thus, no Magistrate, who is not also a Justice of the Peace, can commit or hold to trial any European British subject to take his trial before a Supreme (High) Court of Judicature (S. 39); and further, the jurisdiction given to Magistrates under 53 Geo. III., C. 155, S. 105, can be exercised only by a Justice of the Peace (S. 42).

25. No person whatever shall, by reason of place of birth, or by reason of descent, be exempt from the rules of Criminal Procedure contained in this Act. Provided that nothing in this Section shall be held to authorize the trial or commitment for trial before any Criminal Court¶ of any person who, in respect of the offence with which he is charged, is not subject to the jurisdiction of that Court.
No person exempted from Criminal Procedure by reason of place of birth or of descent.

¶ S. 11.

26. Except where otherwise expressly provided