"POLICE OFFICER'S COMPANION"

An exhaustive analysis of the Police orders; Criminal Procedure Code, Indian Evidence Act; Indian Penal Code, and Special and Local Laws.

BY

Mr. BAQUIR HUSAIN SAHIB

INSPECTOR OF POLICE

TANJORE DISTRICT.

VOLUME II.

Indian Penal Code and Special and Local Laws. with Short notes of Case Law.

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CASE-LAW UNDER INDIAN PENAL CODE.

Common Intention.

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. S. 34 I. P. C.

Intention and Motive defined.

Intention must not be confounded with motive. Intention shows the nature of the act which the man believes he is doing. Motive is the reason which induces a person to do the act which he intends to do and does.

Facts showing intention are relevant when intention is in issue or relevant. S. 14 I. E. A.

When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant. S. 15 I. E. A.

Where an act, in itself indifferent, if done with a particular intent becomes criminal, then the intent must be proved and found; but when the act is in itself unlawful, that is prima facie and unexplained, the proof of justification or excuse lies on the accused, and in failure there-of the law implies a criminal intent.

To join the assailant in making an assault is to act in concert. 21 Cr. L. J. 734, 58 I. C. 158.

The mere fact of a person being present on a certain unlawful occasion, raises no presumption of that person's complicity in an offence then committed. 14 B. 115, 125.

During a trial, for a political offence a crowd gathered with a view to make a demonstration and as a result, a number of Policemen posted to keep order received injuries.

Held, that their joint trial was illegal and S. 34. I. P. C., did not apply, because the assaults on individual members of the Police force were isolated and the accused were not actuated by any common object. 68 I. C. 820, 23 Cr. L. J. 596.

Where several persons unite with a common purpose to effect any criminal object, all who assist in the accomplishment of that object are equally guilty, though some may be at a distance from the spot where the crime is committed and ignorant of what is actually being done. 36 B. 524, 14 B. L. R. 147, 13 Cr. L J. 426, 14 I. C. 970. Where four accused with lathies attacked the deceased and inflicted several blows on the skull, there was a clear intention on the part of all the accused to cause bodily injury likely to cause death and they all committed murder, though the evidence did not disclose who committed the injury. All of them are therefore guilty.

35 A 329, II A. L. J. 752, 14 Cr. L. J. 609, 21 I. C. 657.

Where four persons armed with deadly weapons pursue a fifth, set upon him and kill him, it must be held that their common intention was to cause his death or to cause such bodily injury as was likely to cause death. In such a case all those who take part in the murderous assault are guilty of murder.

23 Cr. L. J. 721, 69 I. C. 449.

The furtherance of a common design is a condition precedent to the conviction of each of the persons who took part in a crime. 9 A. L J. 180, 13 Cr. L. J. 265, 14 I. C. 649. Where two of the accused inflicted several injuries on the deceased and one of them was a fatal blow but it was not found as to who gave the blow. S. 34 does not apply, but only S. 326 I. P. C. 36 C. 659, 18 C. W. N. 680, 10 Cr. L. J. 186, 2 I. C. 841. Where it is doubtful as to who is the offender out of the three present at the offence where they attacked a man to death, all the three are guilty. 20 Cr. L. J. 369, 50 I. C. 977. Two persons armed with deadly weapons attacked the deceased but the death was caused by the blow given by one only.

Held, that the others not having struck the deceased, it could not be said that the criminal act was done by both the accused jointly in furtherance of their common intention and S. 34 I. P. C., was consequently not applicable. As both accused armed themselves with deadly weapons they must have known that in case of opposition the weapons would be used and in all probability grievous hurt would be caused and the second accused was guilty of abetment of an offence under S. 325 read with S. 109 I. P. C. 20 Cr. L. J. 711, 52 I. C. 791. Where three persons assaulted the deceased and gave him a beating, in the course of which one struck him a blow on the head, which resulted in death, it was held that, in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder 19 M. 483. Where each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was convicted of murder. 24 W. R. Cr. 5, 16 C. W. N 909. In the absence of evidence or reason to the contrary, the common object of a riotous mob is presumed to be that indicated by their conduct, and that they entertained it from the beginning. 6 M. L. T. 17, 11 Cr. L. J. 730 4. I. C. 700. Any sudden and unpremeditated act done by a member of an unlawful assembly would not render all other members liable therefor, unless it was shown that the assembly did not understand and realize either that such offence would be committed or was likely to be necessary for the common object. 7 A. W. N. 236, 237. If any person should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not open to him to aver in a court of justice that he was ignorant of the criminal law of the land, and no court of justice is at liberty to receive such a plea. 14 M. 342, 354. Ss. 34 to 38 I. P. C., deal with principals, the law in regard to Accessories before the fact is to be found in Ss. 107 to 120 (Abetment), and Accessories after the fact are treated of in sections 130, 186, 157, 212, and 216 I. P. C. (Harbouring).

Criminal Conspiracy.

Ss. 120-A and 120-B I. P. C., deal with criminal conspiracy and were added by Act VIII of 1913. A person may be guilty of conspiracy even if the illegal act conspired has not been done. 42 C. 957, 16 Cr. L. J. 331, 29 I. C. 513. As to jurisdiction where conspiracy was partly out of British India. See 36-B 524. As to procedure in conspiracy under Ss. 120-A and B See S. 195 (4) and 196 Cr. P. C.

Whether conspiracy to commit non-cognizable offence is covered by S. 120-B. See 40-A. 41, 15 A. L. J. 841, 42 I. C. 924. Where there is reasonable ground to believe that two or more persons have conspired to gather to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. S. 10 I. E. A. When the relevancy of one alleged fact depends upon another alleged fact being first proved the Judge has a discretion as to which proof may be given first. S. 136 I. E. A.

Abetment by conspiracy.

A person is said to abet by conspiracy when he engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. S. 107 Cl. (2) I. P. C. It is not necessary to the commission of the offence of abetment by conspiracy, that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. S. 108 Cl. 5 I. P. C. The difference between abetment by conspiracy and the offence per se., is that in the former case an act or illegal omission must take place in pursuance of the conspiracy or in order to the doing of the thing abetted while in the latter no such sequel is necessary. 28 C. 797, 24 M. 523, 21 W. R. Cr. 35. It is also not necessary that the abettor should commit

the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. To sustain a charge of conspiracy it is not necessary for the prosecution to prove that the accused persons met and laid their heads together and after a formal consultation came to an express agreement to commit an offence. Such an inference is very often drawn from their overt acts. Conspiracy in fact is a matter of inference deduced from certain criminal acts of the accused, done in pursuance of an apparent criminal purpose in common between them and which hardly are confined to one place. If a conspiracy be formed and a person joins it afterwards, he is equally guilty. 16 Cr. L. J. 354, 28 I. C 738, 37 C. 507, 28 C. 797 ref. A conspiracy may be proved by evidence of the conduct of the accused and surrounding circumstances both before and after the commission of the offence without proving any of his overt acts. 17 Cr. L. J. 233, 34 I. C. 649, 9 B. L. R. 347. When a conspiracy between several persons is alleged, the prosecution need not prove before it can be held established, that every conspirator met and had personal communication with all the rest, because, there may be some intermediaries. 10 Cr. L. J. 530, 4 I. C. 268.

Mistake of fact.

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it. S. 79 I. P. C. 'Mistake' is not mere forgetfulness. It is a slip made not by design but, by chance. The mistake must be one of fact and not of law. Mistake in point of law in criminal cases is no defence. 14 M. 342, 354., but it is evidence of mental condition when the knowledge of the accused is necessary to constitute the offence. I Weir 74.

S. 79 I. P. C., does not protect from an offence punishable by any Special or Local Law. 38 M. 773, 15 Cr. L. J. 171, 22 I. C. 747 contra 14 B. L. R. 365.

Private persons acting under Ss. 43, 59, 77 and 78 Cr. P. C., will be protected under S. 79 I. P. C.

When an arrest is made bonafide under S. 59 Cr. P. C. and the person arresting believes in good faith by reason of a mistake of fact that a non-bailable offence had been committed, Sec. 79 I. P. C., is a complete answer to the charge. 54 I. C. 997.

Intoxication-How for it would be a good defence.

Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will. S. 85 I. P. C. Drunkenness is either voluntary or, involuntary. It is involuntary when the person had the intoxicant administered to him either (1) by force, (against his will) or (2) by fraud (without his knowledge).

Law presumes that a man voluntarily drunk had the same knowledge as he would have had if he had not been intoxicated II Cr. L. J. 659, 8 I. C. 469. Voluntary drunkenness is in itself no defence. 5 W. R. 79, 1. I. C. 100, 9 Cr. L. J. 156., though it may go towards mitigation of sentence. 29 C. 493, 14 B. 564, 13 Cr. L. J. 164, 13 I. C. 916. Temporary insanity caused by voluntary drunkeness falls under S. 84 I. P. C. 29 C. 493, 14 B. 564, 570. It is immaterial that the insanity has arisen from voluntary indulgence in drugs or liquor. 4 Cr. L. J. 88, 26 A. W. N. 193, 13 Cr. L. J. 164. Drunkenness may alter the nature of the legal offence committed, though it is no excuse for the act. The question as to knowledge and intention to be attributed to a drunken person has been discussed in 38 M. 479. A habitual gunja-smoker committing murder in a temporary state of intoxication is entitled to the benefit of S. 86 I. P. C., although no such plea is taken under S. 84. 27 C. W. N. 290.

Consent of the injured :— How far is a valid plea in defence.

Ss. 87-93 I. P. C:—deal with the special circumstances under which, (1) consent, express or implied, to incur or run the risk of injury, may be given; and (2) where, owing to certain

urgent reasons, consent in fact is altogether dispensed with, but is given by construction of law; the result in either case being that the person causing the injury is exempted from all liability. Ss. 87 to 91, deal with consent, express or implied and Ss. 92 to 93., with constructive consent.

Where consent is given under misconception of fact but the accused cannot be supposed to be aware of his mistake, he is entitled to the benefit under S. 87 I. P. C. 8 L. B. R. 166. Where the operation is performed with the consent of the patient and in good faith for his benefit and in accordance with the recognized Indian method of treatment, the accused does not commit any offence. 28 A. W. N. 91, but where deceased did not know the risk he was running in consenting to the operation, the accused was held punishable. 14 C. 566, 5 W. R. 7. The consent must be free, it is not valid if obtained by misrepresentation or concealment, and implies not only a knowledge of the risk but a judgment in regard to it, a deliberate free act of mind. 18 C. 484, 14 C. 566. Where a man of full age submitted himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and died from the injury the accused was guilty of culpable homicide and not murder. 5 W. R. 7. Consent given under misconception of fact or on a mis-representation of fact is no consent. 12 W. R. 7, 36 M. 453 contra 8 L. B. R. 166. The onus of proving consent is on the accused. 6 W. R. 57. The explanation to S. 92 does not justify the performance of a dangerous operation by an unskilled person. 5 W. R. 7.

The principal General Exceptions in I. P. C.

1. Mistake of fact. Ss. 76 and 79.

2. Judicial Acts. S. 77.

3. Acts done pursuant to the Judgment or order of a Court. S. 78.

4. Acts done by a person justified, or by reason of a mistake of fact believing himself to be justified by law. S. 79.

5. Acts done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. S. 80. As to burden of proof, see 19 C. W. N. 1043, 3 B. L. R. 678.

6. Acts done without criminal intention to prevent other harm. S. 81.

7. Acts done by children under 7 years of age. S. 82.

8. Acts done by children between 7 and 12 where the child has not sufficient understanding. S. 83.

9. Insanity. S. 84 and 90.

10. Intoxication. Ss. 85 and 86.

11. Acts done with consent. Ss. 87, 88, 89 and 90.

12. Acts done in good faith for a person's benefit but without his consent. S. 92.

13. Communications made in good faith. S. 93.

14. Acts compelled by threats. S. 94.

15. Acts causing slight harm. S. 95.

16. Acts done in self defence. Ss. (96–99).

Burden of proof.

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the I. P. C., or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. S. 105 I. E. A. It is for the prosecution to prove the guilt of the accused; but as to the amount of proof required regard should be had to the rule that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. S. 114. I. E. A.

Ss. dealing with 'BURDEN OF PROOF' are from 101 to 111 I. E A.

Good faith:— Nothing can be said to have been in good faith when it is done without due care and caution. 52 I. P. C. 10 M. L, T. 501. A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not. The law does not exact the same care and attention from all persons regardless of the position they occupy. 12 B 377, 393. Facts showing the existence of good faith are relevant when the existence of good faith is in issue or relevant S. 14, I. E A.

Plea of accident Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in doing a lawful act in a lawful manner by lawful means and with proper care and caution. S. 80 I. P. C. The purely accidental consequences of a man's voluntary conduct will not be imputed to him, if (1) his conduct is lawful, and (2) the consequences are purely accidental. The consequences of a man's conduct are not purely accidental if he has acted with any decree of negligence, i. e., without due care and caution, in which case he will be liable for the consequences. The amount of caution to be used is not the utmost possible caution, but reasonable precaution, having regard to the facts of the case. An accident is not the same as an occurrence, but is something that happens out of the ordinary course of things. An injury to another, which is wholly unforeseen and unintended, is not criminally punishable, unless there is something unlawful in the act itself, or in the mode of doing it. For instance, if a man aims a blow at or leaves poison for another, and the blow or the poison takes effect upon the man's dearest friend, this, in one sense, is an accident, but in law it is treated exactly as if the real sufferer had been the one for whom the harm was intended. An act otherwise innocent becomes criminal, from being done without proper care and caution. If a person rides or drives carelessly, or

urges his horse to an improper speed, and thereby runs over one, whom he could otherwise have avoided, this is not accident, and it makes no difference that the sufferer was deaf, and therefore did not get out of the way, as it might have been expected he would have done. 6 M. H. C. R., Appx. 31. The onus is on the accused to prove the defence of accident if he raises that plea. The motive of the accused is immaterial if the evidence as to the deed done is convincing. Where a plea of accident is set up the court is entitled to a full and detailed account of what had happened. 19 C. W. N. 1013, 16 Cr. L. J. 724, 31 I. C. 164.

Right of private defence.—

Nothing is an offence which is done in the exercise of the right of private defence. S. 96 I. P. C.

Ss. 97, 98 and 99 show when right of private defence exsists. S. 100 shows when the right of private defence of the body extends to causing death. The infliction of death by way of self defence can only be justified on the ground that such infliction is strictly necessary in order to prevent the offence in question being committed. 14 W. R. Cr. 68.

Death, if really necessary for the purpose of defence of the body, may be inflicted in the following cases. S. 100. I. P. C.

(1) Assault causing fear of death.

(2) „ „ of grievous hurt.

(3) Assault with intent to commit rape.

(4) „ „ unnatural offences.

(5) „ „ intention of kidnapping or abduction.

(6) Assaults with intention of wrongfully confining a person, and so preventing recourse to the public authorities.

S. 101 deals with cases when such right extends to causing any harm other than death.

S. 102. when the right of private defence of the body commences and continues.

S. 103. when the right of private defence of property extends to causing death.

Death, if really necessary for the purpose of defence of property, may be inflicted in the following cases.

(1) Robbery.

(2) House-breaking by night.

(3) Mischief by fire on any building, tent or vessel used as a human dwelling or a place for custody of property.

(4) Theft, Mischief, or House-trespass reasonably causing apprehension of death or grievous hurt.

S. 104. when such right extends to causing any harm other than death.

S. 105. when the right of private defence of property commences and continues.

S. 106 deals with the right of private defence against deadly assault when there is risk of harm to innocent person.

There are two classes of cases, in which self-defence is absolutely forbidden. First, where there is time to have recourse to the protection of public authorities, and secondly, with certain limitations, where the act is being done by or under the direction of, a public servant. S. 99 I. P. C. The right of defence begins when a reasonable apprehension of danger commences and ends with the necessity for it. Burden of proving the plea of private defence is on the accused, and when raised a full account of the occurrence must be given in evidence. 11 Cr. L. R. 232.

There is no right of private defence against any act which is not in itself an offence under the Code. 16 C. 206, 218.

Where there is evidence of the exercise of the right of private defence, during the trial of the person accused of killing or injuring another, the court should not ignore the evidence and convict him merely because he sets up a different defence and denies having committed the assault. 22 Cr. L. J 507, 62 I. C. 331. The plea of private defence cannot be taken in appeal for the first time where inconsistent pleas have been taken in lower courts. 21 A. 122. A court cannot set up such plea when the accused himself has not done it. 24 A. W. N. 113, 15 A. L. J. 565, Contra 1912 M. W. N. 404. An accused can plead the right of private defence either specifically or in the alternative. 21 Cr. L. J. 799, 58 I. C. 527. The view that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant, places a greater restriction on the right of private defence of the body than the law requires. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. 28 M. 454. When the accused exceeds the right by beating the wounded man after he had fallen, he is guilty. 39 C. 896. Members of religious procession are justified in the exercise of private defence against the obstructers thereof. 26 M. 249. Threatening attitude against Police officer making unlawful search is justified under S. 97 I. P. C. 16 C. W. N. 1078. Where a Police officer entered into the house of a person of suspicious character at midnight to see whether he was in the house and he was pushed out of the house by that person, it was held that the act of the Police officer in entering into the house was house-trespass and that person was justified in pushing him out. 27 M. 52. So long as a public servant is acting in good faith under colour of his office, he will be protected for assault, though the act may not be strictly justified by law. 44 I. C. 742. Right of private defence is not lost against attempted trespass on one's property, though person exercising right did not send word to Police station near by. 19 Cr. L. J. 248, 44 I. C. 40. In the case of criminal trespass,

the right of private defence continues, so long as the trespass continues, and is controlled by S. 99 I. P. C., it extends to causing death in case the act of trespasser causes a reasonable apprehension that death or grievious hurt may result. 22 Cr. L J. 177, 69 I. C. 33. Infliction of simple hurt on persons committing house trespass as against each other is within limit of right. 18 Cr. L. J. 862. 41 I. C 830. Person resisting attacking party cannot complain of grievous hurt received in fight. 48 I. C. 683.

Acts against which there is no right of private defence:—

When an officer makes a search in good faith and without malice, but without any warrant, the accused could not set up illegality of the officer's proceeding as justification of his obstruction. 19 M. 349. Resistance to unauthorised search 6 C. L. J. 753., and to the execution of an illegal warrant 24 C. 320., II C. W. N. 836, are justified But resistance to execution of a warrant for arrest of a debtor, not signed but initialled was not justifiable. 8 A. 298. Resistance to the Police in execution of an order under S. 145 Cr. P. C., not strictly legal, to take charge of crops, by seizing several men of the Police party, carrying them off into confinement was held to be punishable. 9 C. W. N. 125. Deliberate engagement in fighting is not protected by the section, no matter which party makes the first attack. 35 C. 368, 384, 443, 17 B. L. R. 388. There can be no right of private defence, where the riot is premeditated on both sides. 20 A. 459. When there is time to have recourse to the protection of the public authorities no man has a right to take law into his hand by exercising the right of private defence. 35 C. 103, 7 W. R. 34, 103., but this does not mean that a person in possession of the property should abandon it to the mercy of the marauders. I Weir 44, 16 A. W. N 170, 15 A. L. J. 47. Where the party sowing the crop seeing the other party cutting the crop took counsel together and proceeded to attack the latter and caused grievous hurt, it was held that they could not take the plea of private defence. 24 A. 143, 298, contra 24 C. 686, 25 M. 624, 14 B. 441.

Temporary occupation of land by force does not give a party the right of private defence against the actual occupant. 35 C. 103. The right of private defence of property can only exist in favour of the person who possesses a clear title to the property and not in cases where title is undetermined. 17 Cr. L. J. 180. 33 I. C. 820, 14 B. 441 Dis.

Abetment;—

Sections dealing with abetment are from 107 to 117 I. P. C., and they apply to offences punishable under Ss. 121 A, 124 A, 225 A, 225 B, 294 A, and 304 A. The abetment of an offence is in itself an offence within the meaning of S. 40 I. P. C. P. R. No. 49 of 1887. It will be observed that no punishment is provided for the abetment of offences which are punishable by fine only, and which are not committed in consequence of such abetment. Offences under the following sections are punishable by fine only. Ss. 137, 154 to 156, 171 g to i, 263 A, 278, 283, 290 and 294 A (second para). S. 107 I. P. C., does not define any offence, its purpose being to explain the meaning of the word abetment. Three different states of things may arise after abetment has been committed (1) The offence abetted may never be committed, but none the less the abettor is punishable under Ss. 115 and 116 I. P. C. S. 108, explanation 2. (2) The very offence abetted may be committed. The abettor is then punishable under Ss. 109 and 110 I. P. C. (3) Some act different, but naturally flowing from the act abetted may be committed. The abettor is punishable under Ss. 111 to 113 I. P. C., if in either of the two latter cases, the abettor is present when the offence is committed then he becomes a party to its execution, and hence a principal and punishable as such. S. 114 I. P. C., will apply to such a case. S. 109 I. P. C., only applies to those cases of abetment about which 'no express' provision is made by the Penal code. Hence it does not apply to abetting the waging of war, Ss. 121, 122, 123; to abetting the escape of state prisoner, S. 130; to abetting mutiny, S 132; to abetting an assault of a soldier or sailor on his superior officer, S. 133; and to abetting insubordination by the same, S. 138.

No court shall take cognizance of an offence punishable under S. 108 A unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf. S. 196 Cr. P. C.

S. 117 I. P. C, speaks of aggravated abetment, i. e., where a person abets the commission of an offence, (1) by the public generally, or (2) by a member or class of persons exceeding ten.

An abettor may be tried either jointly with or separately from, the principal offender. S. 239 Cr. P. C. A charge of abetment may be inquired into or tried by the court within the local limit of whose jurisdiction either act was committed. S. 180 Cr. P. C.

A person who merely says "beat" but does not take any part himself, is said to abet the assault. 16 Cr. L. J. 456, 29 I. C. 88. Abetment is constituted (1) by instigating a person to commit an offence; or (2) by engaging in a conspiracy to commit it; or (3) by intentionally aiding a person to commit it. 21 W. R. 8. An attempt to commit the offence of abetment is provided for in S. 511. I. P. C., and there is therefore no legal obstacle to punishing such offence. 24 B. 287, 1 B. L. R. 678. It is not necessary to an indictment for the offence of abetment of an offence to show that such offence was actually committed. 4 C. 366, 18 W. R. 32. A mere conspiracy would not amount to abetment and it is a mere species of abetment; if conspirators were detected before they had done more than discussed plans, with a general intention to commit an offence, they would not be liable as abettors. 18 P. R. 1879. If the principal offence is not substantiated, the charge of abetment falls through. 32 C. L. J. 478, 22 Cr. L. J. 448, 61 I. C. 800. A person charged under S. 379 I. P. C., cannot be convicted under S. 109 for abetment of theft, if he is not charged with abetment. 22 Cr. L. J. 311, 60 I. C. 999, 33 M. 264 fol. Where an accused is discharged, and he afterwards

offers any gratification to the Police officer to withdraw the case against him, he could not be convicted of abetment of an offence under S. 161 I. P. C. 33 C. L. J. 379. When an accused person offered a bribe to a Magistrate who allowed the gratification to be delivered to him, not in order to its acceptance, but in order to have evidence of transaction, held that the accused was rightly convicted under Ss. 116 and 161 I. P. C. 18 Cr. L. J. 327, 38 I. C. 439, 22 M. L. T. 373, 6 L. W. 677, 19 Cr. L. J. 29, 42 I. C. 989. When a Head Constable knowing that certain persons were likely to be tortured for the purpose of extorting confession, kept out of the way thus giving an oppertunity for violence to be had recourse to – he was guilty of abetment by omission. 21 W. R. Cr. 11, 20 B. 394, see also I weir 50 and 52. Two persons set out to accomplish a particular act and agreed that, if the necessity should arise, they would resort to the use of fire-arms, with which they provided themselves On the necessity arising one of them indulged in shooting. Held, he must be treated as having abetted the shooting, as this took place in pursuance of their common intention. 20 Cr. L. J. 465, 51 I. C. 499. Wife having knowledge of proposal to murder her husband being consenting party thereto abets offence of murder. 20 P. R. 1919 Cr. A paramour of woman giving dhatura as love potion to her for administration to her husband is guilty of abetment of offence under S. 307 and 328 I. P. C. 19 B. L. R. 54. Conspiracy in cases provided for by Ss. 311, 400, 401, 402 and 121-A. I. P. C., amounts to a distinct offence. 24 M. 523. Mere presence on the occasion of the commission of the offence does not amount to an abetment within S. 107, unless there is an obligation cast by the law upon the person present to prevent the commission of the offence. 19 Cr. L. J. 63, 43 I. C. 95, 27 C. 144, 566, 2 C. W. N. 49. And unless it was intended to have that effect. 1896 A. W. N. 149. The omission of a co-accused to intervene or raise an alarm while an offence was being committed in his presence, does not constitute an abetment. 15 Cr. L. J. 617, 25 I. C. 625. Mere intention not followed by any act cannot constitute an offence, and an

indirect preparation, which does not amount to an act which amounts to a commencement of the offence, does not constitute either a principal offence, or an attempt or abetment of the same. 24 B. 287; 1 B. L. R. 351; 1 weir 47. Where the accused merely countersigned a report, which was never read out to him and the contents of which he was not aware, held, that the act amounted to an indiscretion on his part, and he was not guilty of abetting the fabrication of a false report. 17 A. L. J. 574, 20 Cr. L. J. 268, 50 I. C. 28. A mere acquiescence or permission does not amount to an instigation, nor can deliberate absence from locality of offence amount to instigation. 4 C. W. N. 500. 'To instigate' means to urge on, incite, bring about by persuasion, provoke. 1917 M. W. N. 831, 22 M. L. T. 373, 19 Cr. L. J. 29; 42 I. C. 989. Advice can become instigation if it is meant actively to suggest or stimulate the commission of an offence. Advice per-se cannot necessarily be instigation. 5 P. L. J. 129. An order of the master to do an act amounts to an abetment. 18 W. R. 8, 12 W. R. 51. If a man commits a criminal act by an innocent agent, the employer and not the agent is guilty of the act. 18 A. W. N. 147. An appellate court cannot find a man guilty of abetment of an offence on at charge of the offence itself. 33 M. 264, 11 Cr. L. J. 49, 20 M. L. J. 84. When a person is convicted for abetment his previous conviction cannot be taken into consideration for enhancing the sentence under S 75. 10 B. L. R. 26.

' Concealing design to commit offence etc.,

Ss. 118, 119, 120 and 123 I. P. C., are all different forms of the same offence, viz., the case of a person intending to facilitate, or knowing that he will be likely to facilitate, the commission of an offence by another. I. B. L. R. 351. These sections apply to the concealment of all offences except those which are merely punishable with fine. Mere concealment without intention or knowledge or likelihood is not an offence under S. 118 but under Chapter X (contempts of public authority). A person is not punishable under S 118 unless he is legally bound to give information or if he has not concealed the design by some overt act. 4. W. R. 2, 34 P. R

1882. The concealment must be the result of some conduct directed to that end and different from mere passive non-disclosure. A mere denial of the existence of a design to commit an offence does not constitute concealment. 28 A. 302, 14 W. R. Cr. 2. If it is an omission, it must be (1) on the part of one bound to reveal and (2) must be shown likely to have facilitated the commission of the offence. See also chapter 6 (Prosecution for false complaints).

Offences against the state.

Ss. 121-130 I. P. C., deal with offences against the state. Every person aware of the commission of, or of the intention of any other person to commit an offence under the above sections must, in the absence of reasonable excuse, give information thereof to the nearest Magistrate or Police officer. No Court shall take cognizance of the above offences except under S. 127, unless upon complaint made by order of, or under authority from the [Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf. S 196 Cr. P. C. The defect is not cured by S. 537, Cr. P. C. 25 P. R. 16.

S. 121 I. P. C :—Waging, or attempting to wage war, or abetting waging of war, against the Queen.

Evidence:—Prove (1) that accused waged war, or attempted to do so, or abetted the same, (2) that such war was against the King Emperor.

The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland S 13 I. P. C. The expression "wages war" in S 121 must be construed in its ordinary sense. Overt acts such as collection of men, arms and ammunition for that purpose do not mean waging war. 37 C. 467, 14 C. W. N. 1114, 11 Cr. L. J. 453, 7 I. C. 359. Where the accused were charged with persons known and unknown to wage war against His Majesty and some known persons were mentioned in the charge, held that the charge could not be sustained against the known

persons whose names were not mentioned in it. Where one of the accused was not named in the petition of complaint though his name was mentioned in the sanction of the Government authorizing the prosecution; held, that the accused must be discharged. Held, also that an application for the issue of process against such accused person before the committing Magistrate did not constitute a complaint. 15 C. W. N. 98.

Forfeiture takes effect from the date of the commission of the offence. 8 B. L. R. 83.

S. 121. A I. P. C:—Conspiracy to commit offences punishable by S. 121 I. P. C.

Evidence:—Prove (1) conspiracy, (2) evidence to connect the accused with it. (3) that the act done was in furtherence of the common design. The acts of the different parties may be proved in order to prove the conspiracy.

A conspiracy is a combination of two or more persons to do an unlawful act or to do a lawful act by unlawful means. It consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means; the agreement may be inferred from circumstances. It is not necessary that all should join in the scheme from the first; those who come in at a later stage are equally guilty. 37 C. 467. Vide also page 4. Foolishness or ignorance does not mitigate the offence. I B. L. T. 27.

The essence of an offence under S. 121 A I. P. C, is the agreement to do all or any of the unlawful acts mentioned in the section. It is not necessary that any act or illegal omission should take place in pursuance of the agreement. 35 M. 247, 13 Cr. L. J. 305, 22 M. L. J. 490, 14 I. C. 849. Joint trial under Ss 121, 121 A, 122 and 123 is not bad for misjoinder of persons or charges. 27 C. 467.

S. 122 I. P. C:—Collecting arms, &c., with intention of waging war against the Queen.

Evidence:—Prove (I) that accused collected men, arms etc., (2) that accused did collect men, arms, etc., with intent

to wage war, or was prepared to wage war, (3) that such war was against the King.

Preparation is distinguished from attempt and intention to commit crime. Preparation consists in the devising or arranging the means or measures necessary for the commission of the offence. I. A. 316, 3 M. 4, 25 M. 726. Confiscation of property may be ordered under Ss. 121 or under 122 I. P. C, though not under S. 124 A. 34 C. 986. 11 C. W. N. 1046 37 C. 467. 34. B. 394, 20 I. C. 994.

S. 123 I. P. C :—Concealing with intent to facilitate a design to wage war.

Evidence :—Prove (1) the existence of a design to wage war against the King (2) the accused's knowledge of such design. (3) the fact of concealment by means of an act or illegal omission. (4) the intent with which the design was concealed.

The concealment must be the result of some conduct directed to that end and different from mere passive non-disclosure. Thus mere denial of the existence of a design to commit an offence does not constitute concealment. 28 A. 302, 14. W. R. Cr. 2.

S. 124 I. P. C:—Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

Evidence:—Prove (1) that the accused committed one or other of the acts specified. (2) that the person against whom the offence was committed was the person known under the name or title by which he is described in the charge. (3) the object with which the act in question was committed.

S. 124 A I. P. C:—Sedition.

Evidence :—Prove (1) that accused spoke or wrote the words, or made the signs or representations, or did some other acts, in question. (2) that accused thereby brought or

attempted to bring into hatred or contempt or excited or attempted to excite disaffection. (3) that such disaffection was towards His Majesty, or the Government of British India.

The essence of crime consists in the intention with which the language is used. 30 C. L. J. 289. 12 B. L. R. 21. Where a speaker, writer or publisher is charged with having excited feelings of disaffection, it is immaterial, whether or not the words did in fact excite such feelings of disaffection. 20 A. 55.

If the accused tries to excite feelings of enmity to the Government that is sufficient to make him liable under this section. 22 B. 112. In judging the question of intent, the publisher must be deemed to intend that which is the natural result of the words used having regard among other things, to the character and description of that part of the public who are to be expected to read them. 21 B. L. R. 867. Advocacy of boycott of foreign goods not as a means of helping industries but to get rid of the English from India followed by imprecations as to the presence of the English being a curse to India amounts to sedition punishable under Ss 124 A and 153 A I. P. C. 5 M. L. T. 24. 19 M. L. J. 81, 9 Cr. L. J 140. 1 I. C. 42.

Language advising "strike" or "boycott" of foreign goods is not sedition however mischievous or misguided such advice may be. 32 M. 3, 5 M. L. T. I. 9 Cr. L. J. 108, 1 I. C. 22.

Wholesale imputation of bribery against Ministerial and Police Officers and of neglect on the part of Government to inquire into such abuses published when sedition is rife may exceed the limits of fair comment and is seditious. 38 C. 202.

An attempt to publish a seditious article is complete, when copies of the magazine, containing the article are sold. It is none the less an attempt because owing to some other external cause the buyers of the magazine are prevented from perusing the article. Whether a certain article is seditious, depends upon whether it is intended to bring the Government into hatred or

contempt, and the question of intention is one of fact. 34 B. 378. 12 B. L. R. 21. 11 Cr. L. J. 180, 5 I. C. 512. The publisher and printer of an article are also liable. 8 B. L. R. 421. They cannot escape responsibility on a plea of temporary absence. 35 C. 945, 38 C. 227. Declared printers and publishers are presumably liable as such unless they can rebut the presumption. 32 M. 338. The sending of a pamphlet by post, addressed to a private individual not by name, but by designation as the representative of a large body of students amounts to publication. It is necessary for the admission of the evidence of a handwriting expert, under S 45 I. E. A., that the writing with which the comparison is made should be submitted or proved beyond doubt to be that of the person alleged and that the comparison should be made in open court in the presence of such person. 30 C. 606. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary. 22 B. 122. If the manuscript be proved to be in the handwriting of the accused and if it be also proved to have been printed and published, proof of the accused's actual posting of the same is unnecessary 39 C. 552, 16 I. C. 327. An attempt to excite feelings of disaffection is equivalent to an attempt to produce hatred of the Government. 22 B. 152. "SWARAJ" means home rule under the Government and the excitement of the members of a public meeting to exert themselves to secure "SWARAJ" does not amount to sedition. 34 C. 991. Advocating "Home rule" for India is not per se, objectionable, but such advocacy to be punishable must offend against existing laws. 39 M. 1085. In case of speeches they must be read as a whole in a fair, free and liberal spirit; it should be viewd in a free, bold, manly and generous spirit towards the speaker. 19 B. L. R. 211. Disaffection means a feeling contrary to affection, in other words dislike or hatred 19 C. 35. It is a positive political distemper, and not a mere absence of negation of love or good will and a positive feeling of aversion which are akin to disloyalty. 22 B. 152. For confiscation of property see S. 122.

The provisions of Ss 124 A and 153 A., I. P. C., are analogous to that of S. 4 of the Indian Press Act. Both sets of provisions attempt to balance two important public considerations, the undesirability of any thing tending to excite sedition or to excite strife between classes and the undesirability of preventing any bonafide argument for reform. 37 M. L. J. 139, 26 M. L. T. 408, 17 A. L. J. 925, 21 B. L. R. 867, 43 M. 146, 10 L. W. 451, 20 Cr. L. J. 593, 52 I. C. 209.

See Preventive Chapter. S. 108 Cr. P. C., and Press Act 1 of 1910.

S. 125 I. P. C :—Waging war against any Asiatic power in alliance with the Queen.

Evidence :—Prove (1) that the power in question is Asiatic, and in alliance, or at peace with the King. (2) that accused waged war against the Government of such power; or that accused abetted or attempted the same.

S. 121-A does not apply to this section, and hence a conspiracy to wage war would have to be followed by an overt act, in order to render it punishable as abetment under S. 125.

S. 126 I. P. C :—Committing depredation on territories of power at peace with the Queen.

S. 126 compared with S 125. (1) the power in question need not be Asiatic one. (2) the object of the expedition is plunder, not to wage war. (3) the depredation must actually be carried out, or preparations made to carry it out.

An attempt to carry out depredation would be punishable under S. 511., whilst abetment would be punishable under the provisions of Chapter V of I. P. C.

S. 127 § I. P. C :—Receiving property taken by war or depredation mentioned in Ss. 125 and 126.

Evidence :—Prove (1) that the property in question was obtained by waging war against any Asiatic power (S. 125), or by commission of depredation (S. 126). (2) that accused

received such property. (3) that when accused so received such property, he knew that it had been obtained as mentioned in (1).

S. 128 I. P. C:—Public servant voluntarily allowing prisoner of State or war in his custody to escape.

Evidence:—Prove: (1) that accused was a public servant. (2) that accused had the person in question in his custody. (3) that such person was state prisoner or prisoner of war. (4) that the prisoner escaped. (5) that accused allowed such person to escape from the place where he was confined. (6) that accused did so voluntarily.

S. 129 I. P. C:—Public servant negligently suffering prisoner of State or war in his custody to escape.

Evidence:—Prove (1) points 1, 2 and 3 as in the previous section. (2) that accused suffered such prisoner to escape from his place of confinement. (3) that accused did so negligently.

A sentry falling asleep while on duty will be liable under this section. 1874 P. R. No. 4.

S. 130 I. P. C:—Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the recapture of such prisoner.

Evidence:—Prove (1) that the person in question was a prisoner of state, or of war. (2) that such prisoner was at the time, in lawful custody; or that such prisoner had escaped from lawful custody. (3) that accused knew that such person was in lawful custody as a prisoner of state or of war; or that accused knew that such prisoner had escaped therefrom. (4) that accused aided or assisted such prisoner to escape; or that he rescued such prisoner, or attempted to do so; or that accused harboured or concealed such prisoner; or that such prisoner was about to be recaptured, but the accused offered or attempted to offer resistance to such recapture.

Offences relatnig to the Army and Navy.

Ss. 131-140 I. P. C.

S. 131 I. P. C :—Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.

Evidence :—Prove (1) that the person abetted is an officer, etc., of the King's Army or Navy. (2) that accused abetted such person to commit mutiny ; or attempted to seduce such person from his allegiance.

The words "officer and soldier" used in the section and in S. 135 include any person subject to the Articles of War for the better Government of Her Majesty's army or to the Articles of War contained in Act No. V of 1869. See 21 Cr. L. J. 511, 56 I. C. 671.

S. 132 I. P. C :—Abetment of mutiny, if mutiny is committed in consequence thereof.

Evidence :—Prove (1) the abetment of mutiny as in S 131. (2) that mutiny was committed in consequence of such abetment.

The publishing of statements, rumours or reports with intent to cause mutiny is punishable under S. 505 I. P. C.

S. 133 I. P. C :— Abetment of assault by an officer, soldier or sailor on his superior officer when in execution of his office.

Evidence :—Prove (1) that accused was guilty of acts of abetment. (2) that the person abetted was an officer, etc., in the King's Army or Navy. (3) that the assault was to be on the superior officer of the person abetted. (4) that such officer was at the time in the execution of his duty.

S. 134 I. P.C :—Abetment of such assault, if the assault is committed.

Evidence :—Prove (1) that accused was guilty of acts of abetment. (2) that the assault was committed. (3) that it was committed in consequence of the abetment.

S. 135 I. P. C :—Abetment of desertion of an officer, soldier or sailor.

Evidence:—Prove (1) that the person instigated was an officer, etc., in the King's Army or Navy. (2) that accused instigated such person to desert.

S. 136 I. P. C:—Harbouring such an officer, soldier or sailor, who has deserted.

Evidence:—Prove (1) that the person in question was an officer etc., in the King's Army or Navy. (2) that such person had deserted. (3) that accused harboured such person. (4) that accused when he so harboured knew or had reason to believe that such person was a deserter. (5) that accused is not the wife of such person.

S. 137 I. P. C:—Deserter concealed on board merchant vessel through negligence of master or person in charge thereof.

Evidence:—Prove (1) that person in question is a deserter from the King's Army or Navy. (2) that such deserter was concealed in a merchant vessel. (3) that accused was, at the time of such concealment, the master, or person in charge of such vessel. (4) that accused was guilty of neglect of duty, as such master or person in charge, or was guilty of want of discipline on board. (5) that such neglect of duty, or want of discipline, was the cause of such concealment.

S. 138 I. P. C:—Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.

Evidence:—Prove (1) that the act was one of insubordination. (2) that the person guilty of such act was an officer, etc., in the King's Army or Navy. (3) that accused abetted such officer in doing such act. (4) that accused at the time knew the same to be an act of insubordination. (5) that such act of insubordination was committed in consequence of such abetment.

S. 138 A I. P. C:—Application of above sections to Indian Marine Service.

S. 139 I. P. C:—Persons subject to Articles of War.

S. 140 I. P. C:—Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.

Evidence:—Prove (1) that accused wore the garb, or carried the token in question. (2) that such garb or token, resembled that used by soldiers. (3) that accused was not a soldier. (4) that accused did as in (1) with the intention, that it might be believed, that he was a soldier, etc.

The wearing of cast-off uniforms for the purpose of clothing, or dressing in Naval or Military uniform for the purpose of clothing, or dressing in Naval or Military uniform for the purpose of dramatic representation is, of course, no offence.

Offences against the public tranquillity.

Ss. 141-160 I. P. C.

These sections contain five species of offences against the public tranquillity. (1) An Unlawful Assembly. (2) A Riot. (3) Belonging to an assembly of five or more persons, when ordered to disperse. (4) Promoting enmity between classes of community. (5) An affray.

S. 141 I. P. C:—Unlawful assembly.

What constitutes an unlawful assembly:—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is.

(1) To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or,

(2) To resist the execution of any law, or of any legal process; or,

(3) To commit any mischief or criminal trespass, or other offence; or,

(4) By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

(5) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation :— An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

An assembly which is lawful in its inception may become unlawful by the subsequent acts of its members. 1 W. R. 19. 18 W. R. 2; 6. C. W. N. 507.

Where the accused assembled and forcibly interrupted a procession upon the ground that it was a nuisance or annoyance to them or their community, it was held that their act clearly fell within clause 4 of S. 141. 1 Weir. 27.

The offence intented to be committed within the meaning of S. 141 I. P. C., ought to be one punishable with 6 months or upwards, whether with or without fine. S. 40 I. P. C.

It has been held that assembling for the purpose of gambling does not constitute an unlawful assembly. 1 Weir 53; 66.

A crowd of about 100 persons, including the accused, had assembled together armed with bill-hooks and sticks, but it dispersed at once on seeing the Police. On those facts the Magistrate assumed that the intention of the members of the crowd was to use criminal force, and having regard to the weapons with which they were armed, he convicted the accused under S. 144 I. P. C. The High Court held that the prosecution had failed to show that the common object of the crowd was such as would constitute it an unlawful assembly as defined by S. 141, and that the accused were entitled to be acquitted. 24 M. 124.

The members of a religious community or denomination have every right to pass through the King's High Way in procession for purposes of religious worship. 13 Cr. L. J. 534, 15 I. C. 806, 32 M. 478, 32 M. 527 Ref. See S. 144 Cr. P. C., Religious Procession.

There is a distinction between admitted right and disputed right. 16 C. 206, 11 B. L. R. 849., but in both cases one who has not the possession of property cannot take it by force and thus take the law in his own hands. 17 C. W. N. 1132, but maintaining a right is no offence. 5 C. W. N. 368, 28 W. R. 25. 14 B. 441, I Weir 56., and persons in possession are justified in taking precautions and using such force as is necessary to prevent the aggressions. 24 C. 686, 14 B. 441, but they cannot go beyond the limit of self defence as they cannot enforce any right illegally. 20 C. 392, 35 C. 368, 384, 20 A. 459, 14 M. 126. The mere use of criminal force or show of criminal force by any person to take possession of any property is not sufficient to bring a case within Cl. 5 of section 141 I. P. C., unless some criminal intent is proved. 12 C. W. N. 96.

S. 142 I. P. C:—Being member of unlawful assembly.

Evidence:—Prove (1) The assembly of five or more persons. (2) any one of the common objects given in S. 141, or a lawful object which was changed for one of those given in S. 141. (3) that the accused was aware of the object, and that (4) after being so aware, he intentionally joined, or continued in the assembly.

One may join a mob from motives perfectly innocent but if the mob becomes an unlawful assembly and he continues in it, he will be guilty as member of an unlawful assembly. I Weir 66. Persons exercising their lawful rights are not members of an unlawful assembly, nor does the assembly become unlawful by their repelling an attack made on them, nor by exceeding the lawful use of their right of private defence for which everyone is individually liable. 39 C. 896. Where persons assembled to prevent a procession by force did

not disperse being ordered by the Police so to do, they were guilty of the offence of being members of unlawful assembly. 14 M. 126. Any one who joins or continues in an unlawful assembly, knowing that such unlawful assembly has been lawfully commanded to disperse is punishable under S. 145 I. P. C. Illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly. 9. W. R. 19. The Police officer or a Magistrate may require the assistance of the public for the purpose of dispersing such assembly. S. 42 Cr. P. C. They cannot require the assistance of an officer or soldier or a volunteer for the purpose of dispersing an unlawful assembly. It is the Magistrate of the highest rank present who can cause an unlawful assembly to be dispersed by Military force. S. 129 Cr. P. C. A prosecution for being a member of an unlawful assembly can be conducted only by the crown and must not be left to a private party. 38 I. C. 441, 18 Cr. L. J. 329.

The accused cannot be convicted if the common object proved is different from the common object charged. 6 M. L. T. 17, 15 C. 388. Both parties cannot have same common object, so they cannot be tried together. 12 W. R. 75. The charge should state the common object, 26 C. 630. Omission of which is mere irregularity which does not vitiate the conviction. 39 C. 781.

S. 144 I. P. C:—Joining unlawful assembly armed with deadly weapon.

Evidence:—Prove 1 to 4 as in S. 142 and further (5) that accused was armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death. Common object of the assembly constituting it an unlawful assembly must be proved. 24 M. 124. When a person instigates another to join an unlawful assembly, he is punishable under this section read with S. 114 even if he had no arm. 5 C. W. N. 250.

Deadly weapon defined

A weapon which when used for its designed purpose is likely to cause death is a deadly weapon; e. g., firearms, swords, knives, etc. The use of anything as a weapon of offence, which is likely to cause death, will bring a case within the section, e. g., stout bamboos. I weir. 70. It is a question of fact to be determined on the special circumstances of each case, whether a lathi is a deadly weapon. 15 A. 19, 12 Cr. L. J. 103. A lathi is not a deadly weapon unless and until it is used on the head or on some vital part. 9. I. C. 586. See also 4 L. W. 125; 2 M. W. N. 213. 17 Cr. L. J. 391; 35 I. C. 823. The mere fact of being so armed is sufficient to convert ordinary rioting into aggravated rioting under this section. The actual use of the weapon constitutes a different offence, viz., under S. 324.

S. 145 I. P. C:—Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

Evidence:—Prove 1 to 4 as above and further that (5) such unlawful assembly had been commanded to disperse, (6) that such command to disperse was in a manner prescribed by law, (7) that accused joined or continued in such unlawful assembly after it had been commanded to disperse, (8) that accused did so, knowing that it had been commanded to disperse.

Opinion of the Police officer dispersing the assembly that it was likely to cause a disturbance is admissible. 7 B. 42.

S. 147 I. P. C:—Rioting.

Evidence:—Prove (1) that five or more persons were assembled, (2) that such assembly was, when it was convened, or subsequently became, unlawful having any of the five objects specified in S. 141, (3) that such object was the common object of those composing such assembly 22 C. 276. It is essential to sustain a conviction that persons forming the unlawful assembly should be animated by a common object and in the absence of such a finding the conviction is not sustainable

and on the ground alone to be set aside 33 C. 295, 2 C. L. J. 516, (4) that accused, or any member of such unlawful assembly, used force or violence, (5) that such force or violence was used in the prosecution of such common object.

Two things are necessary to convert an unlawful assembly into a riot, and to render the members thereof guilty of rioting. (1) The use of force or violence by the assembly or by any member thereof, and (2) in prosecution of the common object of such assembly. Unless there is an unlawful assembly in the first instance, there can be no riot, though there may be affray.

In a rioting case it is not the duty of the Police to adjudicate on the guilt or otherwise of either of the contending parties, the recognized practice is to send up both parties to take their trial and it is the duty of the court to determine on the evidence as to who is the guilty party. 1 Cr. L. R. 30, 17 I. C. 49. In cases of rioting the common object should be clearly and specifically set out in the charge. 11 C. 106, 22 C. 276, 33 C. 296, 3 Cr. L. J. 153, 31 I. C. 825, 16 Cr. L J. 809. See also 54 I. C. 773; 21 Cr. L. J. 165.

The word force is used in S. 146 in the sense defined in S. 349. Violence is force used to any object other than a human being, e. g., smashing windows or throwing stones. 13 Cr. L. J. 821, 17 I. C. 565. Force or violence, however slight or inconsiderable, is sufficient to complete rioting. 26 W. R. 6. Where the members of an assembly when attacked by an opposite party took to flight, they cannot be convicted of rioting. 1904 A. L. J. 602, 1 Cr. L. J. 1057. If the common object of an assembly is not illegal it is not rioting even if force is used by any member. 1 C. W. N. 233, 4 C. W. N. 345., thus resistance to the execution of illegal warrant or to a search without search warrant does not constitute rioting but when right of resistance is exceeded and severe injury not called for, is inflicted, the person who inflicts such injury may be convicted

of such injury. 29 C. 244, 38 C. 304. Sudden quarrel in a lawful assembly or amongst members of an unlawful assembly without any previous intention or design, makes only the individuals liable. 24 W. R. 26., but there should not be any common object prior to the commencement of fight. 35 M. 243. The common object of a riotous mob may be presumed to be that which is indicated by their conduct throughout their proceedings, in the absence of evidence or reasons to the contrary. 11 Cr. L. J. 30, 6 M. L. T. 17.

There can be no private defence when the riot is premeditated on both sides. 20 A. 459. Right to possession is no plea to a charge of rioting by making a forcible entry on land cultivated by trespasser in possession. 6 M. 245, 5 P. L. R. 47.

S. 148 I. P. C :—Rioting armed with deadly weapon.

Evidence :—Prove (1) points 1 to 5 as in section 147, and further (2) that accused was armed with a deadly weapon, or with something which was likely to cause death, when used as a deadly weapon.

For the purpose of a conviction under this section it must be shown that each of the accused was armed. 7 C. W. N. 512, 5 Cr. L. R. 378, 29 I. C. 78. If one member is armed with deadly weapon the other members cannot be charged under this section; only the armed person can be charged under it. 22 C. 276, 4 W. R. 8, 19 A. W. N. 77, contra 5 C. W. N. 250.

S. 149 I. P. C :—Every member of unlawful assembly guilty of offence committed in prosecution of common object.

Evidence:—Prove (1) the existence of the unlawful assembly, of which accused was a member, (2) that an offence was committed by a member of such assembly, (3) that such offence was committed in prosecution of the common object, etc.,

Every member of an unlawful assembly is responsible for an offence committed by another member in prosecution of the common object of such asesmbly or one which he must have known was reasonably likely to be committed. 6 A. 121, 9 A. 645. Members of a party setting out heavily armed for committing dacoity must know that there is every likelihood of using their arms where necessary and therefore if some members fire upon the Police killing any one, all are guilty. (1915) 16 P. R. 1915. When all the members came armed with lathies and the head of the party ordered them to use them, as a result of which the murder was committed, the offence is one which was committed in pursuance of a common object under S. 149. 5 Cr. L. J. 356, 13 A. L. J. 470, 29 I. C. 91, 13 W. R 33. Where one of a party armed with light sticks, kills his immediate opponent by a chance blow, 11 Cr. L. J. 239 or where a person is killed in a fight arising by chance out of an abusive dispute, 4 Cr. L. J. 271, it does not follow, that all the other members are guilty of murder. Where the leader of an armed unlawful assembly shot an opponent, all were held guilty of murder. 13 W. R. 33. The word 'Offence' in S 149 means only an offence under the penal code and does not cover an offence under the Railway Act., A conviction therefore under S. 126 of the Railway Act., read with S. 149 I. P. C., is bad. 21 Cr. L. J. 418, 56 I. C. 210.

Where of several persons charged with rioting armed with a deadly weapon one only is proved to have been possessed of a gun, it is illegal to convict others who had no such dangerous weapon of an offence under S. 149. 16 Cr. L. J. 446, 29 I. C. 78. Where the accused has been acquitted of rioting he cannot be convicted of grievous hurt under S. 325 by the application of this section. 27 C. 566. 16 C. W. N. 1077, 13 Cr. L. J. 502.

S. 150 I. P. C:—Hiring, engaging or employing or promoting or conniving at hiring, engaging or employing of persons to join an unlawful assembly.

Evidence :—Prove (1) that accused hired or engaged, etc., the person in question, or, that he promoted, or connived at such hiring, etc., In the case of connivance it should also be proved (a) that the accused was legally bound to prevent the hiring, (b) that he was physically able to prevent it, and (c) that he did not prevent it, or do all that lay in his power towards preventing it. (2) that such hiring, etc., was, to join, or to become member of, an unlawful assembly.

Finding of the Magistrate that "what the accused has been doing in collecting and harbouring men for the purpose of committing a riot should he find in his interest to do so" was not sufficient to convict the accused under this section without finding of an unlawful assembly. 29 C. 214.

S. 151 I. P C :—Knowingly joining or continuing in assembly of five or more persons after command to disperse.

Evidence :—Prove (1) that the assembly was composed of five or more persons, (2) that such assembly was likely to cause a disturbance of the peace, (3) that such assembly had been commanded to disperse, (4) that such command was lawful, (5) that accused joined, or continued in, such assembly, after it had been so commanded to disperse, (6) that accused did so, knowingly. See S. 127 to 132 Cr. P. C. for powers of dispersing such assemblies by civil or military force. Where the object of three persons was to draw a crowd and their action drew a crowd of fifty or sixty persons likely to cause a disturbance of the public peace, it constituted, as such, an assembly as contemplated by this section. 7 B. 42. It is not sufficient to establish merely that in the opinion of the Magistrate the particular assembly is likely to cause disturbance of public peace but it is necessary to establish to the satisfaction of the court that the assembly is in fact likely to cause it. 22 P. R. 1887.

S. 152 I. P. C :—Assaulting or obstructing public servant when suppressing riot, &c,,

Evidence :—Prove (1) that an unlawful assembly was held, (2) that an endeavour was being made to disperse the same. (3) that the person so endeavouring to disperse it was a public servant, (4) that such public servant was then acting in the discharge of his duty, as such, (5) that accused assaulted or threatened to assault, or obstructed or threatened to obstruct such public servant, whilst so discharging his duties.

The section contemplates resistance to some particular public servant, and therefore general resistance to a Police force does not fall under it. 19 C. 105. To substantiate a charge under this section it is necessary to show intentional aid by some act or illegal omission. It is necessary to prove abetment, and that the act abetted was committed in consequence of the abetment. 6 W. R. Cr. 4. When a Head Constable knowing that certain persons were likely to be tortured for the purpose of extorting confession, kept out of the way thus giving an opportunity for violence to be had recourse to, he was guilty of abetment by omission. 21 W. R. Cr. 11.

S. 153 I. P. C :—Wantonly giving provocation, with intent to cause riot (1) If rioting be committed (2) If not committed.

Evidence :—Prove (1) that something illegal was done, (2) that it was done either malignantly or wantonly, (3) that it was done with the intention or knowledge that it was likely to cause the offence of rioting to be committed.

"Malignantly" implies a sort of general malice. 18 B. 758, 775, 29 A. 569. "Wantonly" means recklessly. 29 A. 569. The section requires that the accused should do something illegal by doing which he malignantly or wantonly gives provocation to any person intending or knowing it to be likely that a riot would be the result. 6 A. W. N. 23. Very strong evidence is necessary to prove that the accused did act malignantly or wantonly. 18 B. 758.

S. 153 A. I. P. C :—Promoting enmity between classes.

To " promote " some thing is not the same thing as to cause it. Cause implies effect. Promotion does not. To promote is to " foment ". 5 Cr. L. J. 439. From the conjunction of the words " attempt to promote " with 'promote' it was intended by the framer of the section that intention by the element of the offence and the word " class " includes races also, viz. Europeans and Indians 10 P. R. 1907. An attack upon a school of opinion does not necessarily involve an imputation upon the class who hold or give effect to that opinion. 21 B. L. R. 867. There must be deliberate attempt to excite one class against the others. 38 C. 214. See also 3 Cr. L. J. 280. There must clearly be an intention to promote or attempt to promote feelings of enmity and hatred between different classes of His Majesty's subjects, to amount to an offence under S. 153 A. 43 C. 591, 20 C. W. N. 199, 17 Cr. L. J. 254, 34 I. C. 974. Distinct passages in a pamphlet alleged to constitute the offence of attempting to promote feelings of hatred need be specified. It is sufficient to allege generally that the pamphlet constitutes an attempt to promote feelings of hatred. 11 Cr. L. J. 583, 8 I. C. 203.

S. 154 I. P. C :—Owner or occupier of land not giving information of riot, etc.

Evidence :—Prove (1) that riot took place, (2) that the land upon which it was committed was owned or occupied by accused; or, that accused had or claimed an interest in the land upon which it was committed, (3) that accused (or his agent or manager) knew that it was being, or had been committed; or had reason to believe that such riot was likely to be committed, (4) that accused (or his agent or manager) omitted to give the earliest notice in his power to the principal officer, etc., or that the accused omitted to use all lawful means in his power to prevent such riot, or to suppress it, if it had taken place. 4 C. W. N. 691.

Prosecution under Ss. 154 and 155 must be prompt and not stale. The prosecution two years after riot, was stopped. 7 C. W. N. 245. Unless the riot was pre-meditated the owner or occupier cannot be liable. 18 W. R. 75. A non-resident co-sharer taking no active part in the management of the estate cannot be convicted under this section, like the resident co-sharer. 7 C. L. J. 289. See also 8 C. W. N. 908. The knowledge of the owner or occupier in cases of this kind is immaterial. He is liable for the acts of commission and the acts of omission not only of himself, but of his agent or manager. 12 A. 550, 28 C. 504, 514.

S. 155 I. P. C :—Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.

Evidence :—Prove (1) that the riot was committed, (2) that it took place with respect to some land, or that it arose out of some dispute, (3) that accused was the owner or occupier of such land, or claimed an interest therein or claimed some interest in the subject of such dispute, (4) that such riot was committed for the benefit or on behalf of accused, or that accused accepted or derived some benefit therefrom, (5) that accused or his agent or manager had reason to believe (a) that such riot was likely to be committed, or (b) that the unlawful assembly, which committed such riot, was likely to be held, (6) that accused, his agent, or manager did not respectively use all lawful means, etc., (a) to prevent such assembly or riot from taking place, or (b) for suppressing and dispersing the same.

Ss. 155 and 166–apply where a riot takes place for the benefit of the owner of the land on which it takes place. The knowledge of the owner or occupier is immaterial, that his agent or manager should have taken an active part in a riot is sufficient to warrant the conviction of the owner. 12 A. 550. There can be no conviction unless it is shown that the accused had property in the land. 17 C. W. N. 1247.

S. 156 I. P. C :—Agent or owner or occupier for whose benefit riot is committed not using all lawful means to prevent it.

Evidence :—Prove (1) that a riot was committed, (2) that the riot, if committed, was committed for the benefit of the accused, and (3) that the accused had reason to believe that a riot was likely to be committed.

S. 157 I. P. C :—Harbouring persons hired for unlawful assembly.

Evidence :—Prove (1) that the house or premises in question were in the occupation or charge of, or under the control of accused, (2) that such persons had been hired, engaged or employed, or were about to become so, to join or become members of an unlawful assembly, (3) that accused harboured, received, or assembled therein the persons in question, (4) that when he did as in (3) he knew that such persons had been so hired, etc, for that purpose.

This section as compared with S. 150 is of wider application and contemplates the imminence of an unlawful assembly and proof of facts which in law would go to constitute an unlawful assembly. 29 C. 214.

S. 158 I. P. C :—Being hired to take part in an unlawful assembly or riot.

Evidence :—Prove (1) the engagement or hiring of accused, or the offer or attempt by accused to become so, (2) that the object of such engagement or hiring was, to do or assist in doing an act which would make an assembly an unlawful one, (3) prove also (for the last part of the section) whether accused went or offered to go armed with a deadly weapon.

The offence under this section differs from that under S. 150, in that an attempt to get hired is equally punishable with the offence of actually being hired. An offer to go armed, being hired, or going armed, renders the offence an aggravated one, more severely punishable in consequence.

S. 159 I. P. C:—Affray.

Define:—When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

An affray cannot be committed in a private place, does not require five or more persons, it must be committed in a public place, and it is regarded as an offence against the public peace whereas a riot may take place anywhere, it requires five or more persons and it is regarded as an offence against person of an individual party.

Public place defined.

A place to which the public have no right of access by permission, usage or otherwise is not a public place, although the place may be in sight of the public. 17 A. 166. A public place is a place where the public go, no matter whether they have a right to go or not. The right is not the question. 39 M. 886, 40 M. 556, 31 C. 542.

An omnibus (22 L. J. 122), a railway platform (23 L. J. 393, a public urinal (40 L. J. 67), a goods yard of a railway station and platform at a time when no train is due except a goods train (3 A. W. N. 197), an unfenced compound (31 C. 542), harbour premises (39 M. 886), a place forming part of the compound of Hindu temple (40 M. 556), are public places. A private chabutra adjoining a public thoroughfare (17 A. 166), a railway station and platform at a time when no train is due except a goods train (3 A. W. N. 197) and a private garden are not public places. See also Gambling Act iii of 1867.

S. 160 I. P. C:—Punishment for committing affray.

Evidence:—Proof (1) that accused and another person, or other persons, were fighting, (2) that such fight was in a public place, (3) that the fight disturbed the public peace.

In an affray specific evidence as to the acts of each fight cannot be given and general evidence of the accused taking

part in the fight is sufficient. 21 C. 392 and that such fight was in a public place disturbing the public peace. I Weir. 71.

Offences by or relating to public servants.

Ss. 161-171.

S. 161 I. P. C:—Public servant taking gratification other than legal remuneration in respect of an official act.

Evidence:—Prove (1) that the accused at the time of the offence was, or expected to be, a public servant. (2) that he accepted, or obtained, or agreed to accept, or attempted to obtain from some person a gratification. (3) that such gratification was not a legal remuneration due to him. (4) that he so accepted &c., such gratification, as a motive or reward, for (a) doing, or forbearing to do an official act; or (b) showing, or forbearing to show favour or disfavour to some one in the exercise of his official functions; or (c) rendering, or attempting to render any service or disservice to some one, with the Legislative or Executive Government, &c., or with any public servant.

A bribe not connected with official act is not an offence under S. 161 I. P. C. When an accused Chowkidar found a widow at the shop of a certain goldsmith at night, and the goldsmith gave him a bribe to hold his tongue and to prevent him from being disgraced, it was held that he was not guilty of an offence under S. 161 I. P. C. 3 A. W. N. 179.

A bribe is given in consideration of some official act or conduct. Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances. 31 B. 335, 9 B. L. R. 331.

A mere asking is sufficient to constitute an attempt. 2 A. 253.

A bribe is not the less a bribe because its payment is postponed. 14 C. W. N. 101.

Even if public servant is corrupt and solicits a bribe directly or indirectly, the giving him a bribe is none the less an abetment of this offence.

Where a bribe was collected from certain inhabitants of a village by subscription and handed over to the receipient

in a lump sum it was held that the receipient could not be charged under S. 161 merely with the receipt of the whole sum collected, but that he must be charged in respect of not more than three separate items constituting the total collection. 24 A. W. N. 223. 25 M. 61; 3 B. L. R. 540 contra, 32 P. W. R. 1911.

A charge under S. 161, need not be in respect of every item received by the accused from several people for a common object useful to all. 12 Cr. L. J. 217, 10 I. C. 156.

Evidence should be conclusive to establish a charge of bribery against a public servant or his having committed an offence while discharging his duties. 12 Cr. L. J. 485, 12 I. C. 93.

It is not enough for a conviction under S. 161 I. P. C., that the accused merely took a certain sum, but it must be proved that he took the amount as a motive or reward for any of the purposes mentioned in the section. 21 C. W. N. 552. 18 Cr. L. J. 565; 39 I. C. 805.

A Police officer not authorized, arrests a man outside his jurisdiction and releases him on receiving a sum of money, this is not a bribe for it is no part of his official duty to make an arrest. He may be liable for some other offence.

Where a certain sum of money is paid to a public servant as illegal gratification on one day and a certain sum on another day for the same purpose, the offence of receiving illegal gratification becomes a continuous offence and there ought not to be separate convictions for offences under Ss. 161 and 165 for the same offence. 5 C. W. N. 332.

To sustain a charge under S. 161 actual discharge of public functions when receiving bribe is not required. 19 Cr. L. J. 486, 45 I. C. 150.

When it is clearly established that illegal gratification was obtained, it is not necessary to show how it was demanded or obtained. 15 A. L. J. 127. It cannot be pleaded that the benefit bargained was to go to somebody else. 21 B. 517. When

a bribe has been given, it is immaterial to inquire what, if any, effect the bribe had on the mind of receiver. 14 C. W. N. 101.

The power of the court to punish a public servant is not taken away merely because the offender has already been punished departmentally 12 Cr. L. J. 143, 9 I. C. 831.

A person who defacto, though wrongly, discharges the duties of an office through which he apparently figures as a public servant, may be tried for getting a bribe. 16 W. R. 27.

Vakalats and affidavits registered before a village munsiff are not judicial records. Therefore a demand of money for registering a vakalat is not an offence under Sec. 161. 18 Cr. L. J. 37, 33 I. C. 869. (Mad).

A person handing currency notes to a Magistrate to show favour to an accused is guilty under Sec. 161, though his motive may be merely to expose a corrupt Magistrate. 22 M. L. T. 373, 6 L. W. 677. (1917) M. W. N. 831., 19 Cr. L. J. 29., 42 I. C. 989.

S. 162 I. P. C :—Taking gratification, in order, by corrupt or illegal means, to influence public servant.

Evidence :—Prove (1) that the accused accepted, or obtained, or agreed to accept, or attempted to obtain, from some one for himself, or for some one else a gratification. (2) that he accepted, &c., the same, as a motive or reward to induce, by corrupt or illegal means, a public servant, (a) to do or forbear to do an official act; or (b) to show, with exercise of his official functions, favour or disfavour to some person; or (c) to render or attempt to render, any service or disservice to some person, with the Legislative, &c., or with any public servant as such.

Acceptance of bribe by public servant for purposes of evidence only will not lessen offence of giver. 38 I. C. 439.

A person, who accepts for himself, or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain act, is punishable under S. 162 and not under S. 161 I. P. C. 3 W. R. 19.

The name of the person from whom the gratification was obtained must be proved. 3 W. R. 69.

A conviction under S. 162 I. P. C., cannot be sustained without a finding that the money was accepted or obtained by the accused as a motive or reward for tampering with a public officer. 1910 M. W. N. 776, 9 M. L. T. 137, 11 Cr. L. J. 696, 8 I. C. 663.

S. 163 I. P. C :—Taking gratification for exercise of personal influence with public servant.

Evidence :—Prove the same points as for S. 162 except that in (2) proof of "personal influence" should be given instead of "corrupt or illegal means".

Under S. 162 the gratification is taken, in order, by corrupt or illegal means, to influence a public servant. Under S. 163 it is taken for the 'exercise of personal influence' with a public servant. Both these sections extend also to attempts.

S. 164 I. P. C :—Punishment for abetment by public servant of offences defined in S 162 or 163.

Evidence :—Prove (1) that the accused was a public servant. (2) that as such he abetted an offence punishable under S. 162 or 163. Establish abetment under S. 107 I. P. C. (3) that an offence under S. 162 or 163 was committed.

S. 165 I. P. C :—Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.

Evidence :—Prove (1) that the accused is a public servant. (2) that he has accepted or obtained, or has agreed to accept, or has attmpted to obtain, for himself or for some one else, a valuable thing. (3) that he gave no consideration for it, or gave a consideration, which he knew to be inadequate. (4) that the person from whom the accused accepted, &c., the same, was known to the accused to have been, or then was, or was likely to be concerned in a proceeding or business transacted or about to be transacted by himself, or which had a connection with the official functions of himself, or of a public servant to

whom the accused was subordinate or from person known to the accused to be interested in, or related to, the person so concerned.

The mere taking of presents by a public functionary when it cannot be proved that such presents were corruptly taken is made penal by S. 165 I. P. C.

S. 165 I. P. C. does not prohibit a sale or purchase by a public servant, at a fair price, to or from a person transacting business before him.

If a person, being in any way connected with the official functions of a public servant, induces him to accept any thing for an inadequate consideration, he abets the offence under S. 165 I. P. C.

Receiving of gifts by any one holding any office under the crown is punishable as extortion. Regulation Act 1772, East India Company Act, 1793.

S. 166 I. P. C :—Public servant disobeying law, with the intent to cause injury to any person.

Evidence :—Prove (1) that the accused is a public servant. (2) that he conducted himself in the particular manner charged. (3) that such conduct was in the exercise of his public duties as such servant. (4) that such conduct was in disobedience of a direction of law. (5) that when the accused disobeyed such direction of law, he did so knowingly. (6) that when the accused was guilty of such disobedience, he thereby intended or knew that he was likely thereby, to cause an injury.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a court of justice, knowingly disobeys that direction of law, with knowledge that he is likely to cause injury to Z. A has committed the offence under S. 166 I. P. C.

Where a peon whose duty it was to require the signature of a person on whom a notice was served, represented the notice to be a warrant and arrested him, it was held that he

had disobeyed a direction of law and that he was guilty under S. 166 I. P. C. 7 M. L. T. 429, 20 M. L. J. 568, 11 Cr. L. J. 695, 6 I. C. 773.

If the direction of law given by a special Act is violated, and not under S. 166, the punishment will be under the Act Thus, a Postal official absenting himself from his station without leave would be charged under the Post office Act.

20 M. L. J. R. 568, 7 M. L. T. 429. See also I Weir 72.

S. 166 deals generally with the disobedience of any direction of law; and S. 167 deals with a specific instance viz., that of framing an incorrect document with intent to cause injury.

Making what purports to be a copy of a document is not included in the words "preparation or translation of any document" nor in the words "frames or translates that document."

S. 167 I. P. C:—Public servant framing an incorrect document with intent to cause injury.

Evidence:—Prove (1) that the accused is a public servant. (2) that he had the charge of the preparation or the translation of the document. (3) that he had such charge, in his capacity of a public servant. (4) that he framed or translated it in an incorrect manner. (5) that he knew, or believed, that the was incorrectly framing or translating the same. (6) that he did as above, with intent, or with the knowledge that it was likely that he would thereby cause injury.

Where an amin, who was entrusted with the execution of a warrant for the attachment of movable property, submited a report to the court with a certificate, falsely stating therein that certain persons forcibly rescued the attached property, while it was in fact released by an amicable arrangement with the consent of the judgment creditor, it was held that he was a public servant charged with the preparation of a document within the meaning of S. 167 and was liable to be punished under it. Weir. 74.

S. 168 I. P. C :—Public servant unlawfully engaging in trade.

Evidence :—Prove (1) that the accused was a public servant. (2) that he, as such, was legally bound not to engage in trade. (3) that he did engage in trade.

The word 'trade' used in S. 168 I. P. C., means a habitual engagement of buying and selling with a view to profit. The word 'trade' does not include lending money at interest. 4. P. L. R. 609; 22 P. R. 1903, but see (1911) N. L. R. 53.

The conduct of a Police officer carrying on a shop comes within the prohibition contained in S. 10 of the Police Act and he is, therefore, liable to be convicted under the section. The words 'Any employment or office whatever' in S. 10 of the Police Act are wide enough to cover the case of a Police officer who engages in trade. 19 Cr. L. J. 152, 43 I. C. 440.

S. 169 I. P. C :— Public servant unlawfully buying or bidding for property.

Evidence :—Prove (1) that the accused was a public servant, (2) that he, as such, was legally bound not to purchase or bid for the property in question. (3) that he did purchase or bid for that property, either in his own name, or in the name of another, or jointly, or in shares with others. A sub-inspector being charged with having purchased a pony which was impounded was convicted under this section. 16 W. R. 52, 8 B. L. R. Ap. 1.

S. 170 I. P. C :—Personating a public servant.

Evidence :—Prove (1) that the accused personated some public servant, or that he pretended to hold the office of a public servant. (2) that he was not a public servant; or that he did not hold such office. (3) that he acted falsely in such personation; or that he knew that he did not hold such office. (4) that he, when assuming such character, did or attempted to do something under colour of such office.

"Falsely" does not mean fraudulently, and a fraudulent or dishonest intention is not necessary. 3 L. B. R. 222.

The act referred to in S. 170 should have some relation to the office, which the actor pretends to hold. If it has no relation to the office the offence may amount to cheating.

It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated, for example the accused was arrested when he was demanding one anna's worth of fruit from a fruit-seller for one pie on the representation that he was a Head-Constable, which in fact he was not. It was held that if he pretended to be a Police officer and as such Police officer tried to extort money or things from a fruit-seller, he had committed an offence under S. 170 I. P. C., and it was not necessary that the act done under colour of office should be a legal act on the part of the accused. 27 A. 294.

A person doing an official act in pursuance of what he honestly believes to be his lawful title to the office, does not come within the section :—Where a village Revenue Officer in the absence of the Village Magistrate, in good faith exercised the powers of a Village Magistrate, he was not punishable under this section. 1 Weir. 74.

Accused went to the platform of a railway station without a ticket and obtained admission on the pretence that he was a C. I. D., officer. Held, that his conviction under S. 170 I. P. C., was wrong. The mere assumption of false character without any attempt to do an official act is not sufficient to bring the offence within the meaning of S. 170 I. P. C. 19. Cr. L. J. 209, 43 I C. 785.

S. 171 I. P. C :—Wearing garb or carrying token used by public servant with fraudulent intent.

Evidence :—Prove (1) that the accused wore the garb, or carried the token in question. (2) that such garb or token resembled that of a public servant. (3) that the accused did not belong to the class of public servants, who use such garb

or token. (4) that he did as in (1) with the intention, or with the knowledge, that it was likely, that it might be believed he was such public servant.

A mere circumstance of wearing garb or carrying token used by public servant, with the intention or knowledge supposed is sufficient to bring home a charge under S. 171 I. P. C., although no act is done or attempted in the assumed official character. See 5 Cr. L. J. 211.

Merely wearing a garb without the specific intention is no offence. Otherwise actors' putting on every kind and shade of uniform will be an offence. Similarly persons using cast-off uniforms etc., will not be liable.

Wearing of the garb or carrying of the token of a soldier is punishable under S. 140 I. P. C.

Contempts of the lawful authority of public servants.

S. 172—190 I. P. C :—

The above sections must not be taken to interfere with other powers possessed by courts of justice and public functionaries to enforce their orders. They will not affect other coercive powers of the courts of justice to compel performance of their orders and decrees, whether by attachment and sale of property, by imprisonment or otherwise. M & M 143. They comprise seven groups of offences.

(1) Disobedience to summons etc., Ss. 172 to 175.

(2) Omissisn to give information, and furnishing false information. S 176 and 177 I. P. C.

(3) Refusing to take oath, etc., S. 178 to 180.

(4) False statement on oath, and false information with intent to injure. Ss. 181 and 182 I. P. C.

(5) Obstruction of, and omission to assist a public servant. Ss. 183 to 187.

(6) Disobedience to the order of a public servant. S. 188 I. P. C.

(7) Threat of injury to a public servant. Ss. 189 and 190 I. P. C.

S. 172 I. P. C:—Absconding to avoid service of summons or other proceedings.

Evidence:—Prove (1) that the process in question was a summons, notice, or order. (2) that the same was issued by a public servant. (3) that such public servant was legally competent as such to issue it. (4) that such process was issued in order to be served on the accused. (5) that the accused absconded in order to avoid being served with such process. For the second clause of the section prove further. (6) that the process required the attendance of the accused (either personally or by his agent) or required the production of a document by him (either personally or by his agent); and, (7) that such attendance, or production was to be in a court of justice.

To abscond in order to avoid the service of process' which has not issued, is no offence. If a person, having concealed himself before process issues, continues to do so after it is issued, he absconds. 4 M. 393, 397. 1 weir 76; 9 W. R. 70.

'Abscond' does not necessarily imply that a person leaves the place in which he is, it matters not whether he departs from a place or remains in it. If he conceals himself is enough.

A warrant is not an order served on an accused but simply an order to the police to arrest him, but the section 172 I. P. C., is applicable to witnesses who abscond to evade service of warrant issued by a Magistrate under Ss. 181 to 196 Cr. P. C. 9 W. R. 70, 1 weir 75.

S. 173 I. P. C:—Preventing service of summons or other proceedings, or preventing publication thereof.

Evidence:—Prove (1) that the process in question was a summons, notice or order, or a direction for a proclamation. (2) that the same was issued or made by a public servant legally competent to issue such process; or that such public servant was legally competent to direct such proclamation to be made, the same being lawful, and under his authority. (3) that such summons, notice or order, was issued, to be served either upon the accused, or upon some one else; or that such summons, notice or order, had been, or was to be, lawfully affixed to some place; or that such proclamation was about to be made (4) that

the accused prevented such service of the summons, notice, or order, or that he prevented the affixing of such process; or, that he removed the same when so affixed; or that he prevented the making of such proclamation. (5) that the accused did as above intentionally. For the second clause of the section prove further (6) that the process, or proclamation, required the attendance of the accused (either in person or by agent) or the production of a document; and (7) that such process or proclamation was to attend, or to produce the document in a court of justice.

A refusal to sign a summons (20 C. 358), a refusal to receive a summons (5 M. 199, 1 Weir 80), and throwing down a summons after service (5 M. 200 (n), 1 Weir 79) do not constitute the offence under S. 173 I- P. C.

Under the code of criminal procedure, the mere tender to a person of a summons is sufficient, and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself under S. 173 I. P. C. 16 A. L. J. 453, 40 A. 557, 19 Cr. L. J. 746, 1 Weir 80; 5 M. 199, 46 I. C. 522.

Mere refusal to accept summons does not mean intentionally preventing service of summons. It must be proved that the accused prevented the process-server from tendering the summons. 57 I. C. 928.

Refusal by the witness to receive a summons tendered to him to appear and give evidence does not amount to preventing service and a person so refusing cannot be convicted, of an offence under S. 173 and 174 I. P. C. 11 M. L. T. 405, 13 Cr. L. J. 245, 1912 M. W. N. 528, 14 I. C. 597.

A person is not guilty under S. 173 I. P. C., by not taking subpoena, issued under S. 160 Cr. P. C., 19 Cr. L. J. 801 46 I. C. 817.

S. 174 I. P. C :—Non-attendance in obedience to an order from public servant.

Evidence :—Prove (1) that the obligation to attend was in obedience to a summons, &c., (2) that such summons, &c.,

was issued by a public servant, legally competent, as such, to issue the same. (3) that the accused became thereby legally bound to attend in person or by agent, at a certain place and time. (4) that he omitted to attend at such place or time; or that he departed from the place before the time at which it was lawful for him to depart. (5) that he did as above intentionally. To bring the case within the second clause, it must be further proved (6) that the summons or notice was to attend in person or by agent in a court of justice.

A verbal order given to a witness by a Court to attend on a particular day at a particular hour is an order, the disobedience of which is punishable under S. 174 I. P. C. 1 Weir 87.

In absence of an order in writing as required by S. 160 Cr. P. C., a person who was asked orally to appear before a Police officer as a witness, was held not to have committed an offence under S. 174 I. P. C., for non-appearance. 1 Weir 86.

S. 72 Cr. P. C. is intended to apply only to summons issued by a court of justice and not to orders of Police officers investigating a crime under chapter XIV of Cr. P. C., where an amin failed to attend a Police investigation in obedience to a summons directly served on him by the Police, held that his conviction under S. 174 I. P. C. was legal. 18 Cr. L. J. 733, 40 I. C. 733.

If the witness explains his inability to the process-server that he will not be able to attend, he does not "intentionally "disobey the summons. 22. P. R. 1880.

It must be proved that the nonattendance was in the nature of a wilful disobedience. 2 A. W. N. 52.

Disobedience to the summons of a Village-Munsif should be dealt with under the provisions of S. 15 and 16 of Regulation IV of 1816 Madras. But if a charge is laid under the Penal Code, the criminal court must deal with it. 6 M. 249.

Where a person did make an appearance through Mukhtyar, though not a personal apperance, on service of

summons, it was held, under the circumstances, not to be an offence under S. 174. 27 C. 985.

Complainant, a batta peon, arrested defendant on a warrant, and asked him to follow him. Defendant promised to do so, went into the house on the pretext of fetching a turban, and absconded. Held that a conviction under S. 174 was illegal. 2 Weir 38.

Where the public servant remains absent on the date of appearance, the accused cannot be convicted though he purposely fails to attend. 20 M. 31, but where the accused attended the court at 10 A. M., at the time mentioned in the summons but finding the Magistrate not present departed without waiting for a reasonable time he was punishable. 10 B. 93, 14 W. R. 20, but a person departing without permission was not held guilty in the absence of a direction that he should not leave without permission. 1 Weir. 94.

To convict the accused, personal service is necessary. 7 W. R. 58, 6 C. W. N. 927, 11 M. 137, 1 Weir 84, 85. Service must be proved by the serving officer. 1 Weir. 85.

Where the complainant was ordered to attend court on the date fixed for the hearing of the case and he failed to attend but the magistrate did not take up the case owing to some other demand on his time. Held, that the complainant could not be convicted of an offence under S. 174 I. P. C. 10 Cr. L. J. 576, 4 I. C. 410.

S. 175 I. P. C:—Omission to produce document to public servant by persons legally bound to produce it.

Evidence:—Prove (1) that it was a public servant, or a court of justice against whom the offence was committed. (2) that the accused wss legally bound to produce or deliver up the document in question to such public servant, or court of justice. (3) that the accused omitted to produce, or deliver up the document. (4) that the accused did so intentionally.

An accused person can be called upon to produce documents in his possession and the court is empowered to issue processes to produce documents. Before a person can be

convicted under S. 175 I. P. C., it is necessary to show that the production of the document was material for the decision of the case in which the document was called for. 43 I. C. 793, 19 Cr. L. J. 217.

S. 176 I. P. C:—Omission to give notice or information to public servant by person legally bound to give it.

Evidence:—Prove (1) that the accused knew of the circumstance, or had information in question. (2) that he was legally bound to give notice thereof, or to furnish such information. (3) that such notice should have been given, or such information furnished, to a public servant. (4) that he omitted to give such notice, or furnish such information, as required by law. (5) that he omitted to do so intentionally.

For the second clause of the section prove further.

(6) that such notice or information had reference to the commission of the offence, or was required to prevent the commission of an offence, or in order to apprehend an offender.

There must be intentional breach of the obligation. 16 W. R. 35, 18 W. R. 22. When a person fails to do his legal duty he must be presumed to intend to conceal it. 17 M. L. T. 263. To convict a person for not giving information of occurrence falling under Cl. (d) of Sec. 45 Cr. P. C., it is not necessary to show that the death actually occured on his land when the circumstances denote that the death was sudden unnatural or suspicions and the body was found there. 11 C. 619.

See Chapter 6 (Prosecution for false complaint).

S. 177 I. P. C.—Furnishing false information.

Evidence:— Prove (1) that the accused was legally bound to furnish information in question to a public servant. (2) that he did furnish certain information in pursuance of such obligation. (3) that the information so furnished was false. (4) that he furnished it as true although he knew, or had reason to believe, it to be false.

For the second clause of the section prove further.

(5) that such information was with respect to the commission of an offence.

This section refers only to such statements as one is legally bound to make and not to every statement. 14 M. 484, 12 W. R. 23, 6 A. 97 diss 4 M. 144, 13 C. W. N. 191, 1 Weir 106. A Police officer making a false report in the diary (20 A. 151), where he gives false information of a dacoity to his superior (21 W. R. 30) and constable, whose duty was to ascertain on his rounds whether certain notoriously bad characters were in their houses or not, gave a false report that they were, he committed an offence under this section. 15 C. 386.

See chapter 6 (Prosecution for false complaints).

S. 178 I. P. C :—Refusing oath or affirmation when duly required by public servant to make it.

Evidence :—Prove (1) that the accused was required by a public servant to bind himself by an oath or affirmation to state the truth. (2) that such public servant was legally competent to require that the accused shall so bind himself. (3) that the accused refused to bind himself as required.

S. 179 I. P. C :—Refusing to answer public servant authorized to question.

Evidence :—Prove (1) that the accused was legally bound to a public servant to state the truth on the subject in question. (2) that such public servant questioned him touching such subject. (3) that such public servant was exercising his legal powers in putting such questions. (4) that the accused refused to answer such questions.

If a Judge asks any question with a view to criminal proceedings being taken against a witness, the witness is not bound to answer them. 10 B. 185. A complainant cannot be punished for refusing to answer as he is not a witness. 13 B. 600.

S. 180 I. P. C :—Refusing to sign statement.

Evidence :—Prove (1) that the accused made the statement. (2) that he was required to sign such statement by a public servant. (3) that such public servant was legally competent to

require him so to sign it. (4) that the accused refused to sign that statement.

Refusal of the accused to sign a statement recorded under S. 364 Cr. P. C., is punishable. 39 A. 399, but the refusal of the accused to sign a statement made at his trial in answer to question put by the court is not an offence. 4 B. 15, 3 L. B. R. 199. Refusal to sign a receipt for a summons is not an offence 20 C. 358. A witness is not bound to sign his deposition given in Revenue inquiry. 6 M. H. C. Ap. 14, 1 Weir. 112, nor in the Civil court. S. P. R. 1912. A witness is bound to sign his deposition, it is only when the evidence has been read over to him and has been admitted by him to be correct. 1 A. W. N. 43.

S. 181 I. P. C:—False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.

Evidence:—Prove (1) that the accused took the oath, or made the affirmation in question. (2) that the same was legally binding upon him. (3) that such oath or affirmation was administered by a public servant or a person authorized by law to administer the same. (4) that the accused whilst so bound made the statement in question to such persons. (5) that such statement was made touching the subject on which he was thereby bound to state the truth. (6) that what he so stated was false. (7) that he then knew that his statement was false, or had reason to believe it was false, or did not believe it was true.

Making a false statement without knowing whether it is true or false, constitutes an offence under this section because the accused does not believe it to be true 2 W. R. 47. This section does not apply when the public servant is not competent to take statement on solemn affirmation. 6 M. 252, 12 M. 451.

S. 182 I. P. C:—False information, with intent to cause public servant to use his lawful power to the injury of another person.

Evidence :—Prove (1) that the person to whom the information was given was a public servant. (2) that the accused gave the information in question to that public servant. (3) that such information was false. (4) that the accused knew or believed such information to be false when giving it. The fact that an information is shown to be false does not cast upon the party who is charged with an offence, under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false. (5) that the accused intended thereby to cause, or knew that it was likely that he would thereby cause, such public servant to do or omit anything which such public servant ought not to do or omit if the true state of facts were known to him ; or that he intended thereby to cause, or knew that it was likely that he would thereby cause, such public servant to use his lawful powers to the injury or annoyance of any person.

See chapter 6 (Prosecution for false complaint). Vol. I.

S. 183 I. P. C :— Resistance to taking of property by lawful authority of public servant.

Evidence :—Prove (1) that the person resisted is a public servant. (2) that the property was being taken by his authority. (3) that such authority to take the property was lawful. (4) that the accused offered resistance to such taking. (5) that the accused at the time, knew that it was a public servant who authorized such taking.

S. 184 I. P. C :—Obstructing sale of property offered for sale by authority of public servant.

Evidence :—Prove (1) that the property was offered for sale. (2) that such sale was by authority of a public servant. (3) that such authority was lawful. (4) that the accused obstructed such sale. (5) that he did so intentionally.

S. 185 I. P. C :—Illegal purchase or bid for property offered for sale by authority of public servant.

Evidence :—Prove (1) the holding of the sale. (2) that such holding of the sale was by authority of a public servant

(3) that such authority was lawful. (4) that the accused bid for, or purchased such property, either for himself, or for some other person. (5) that the person for whom he bid or purchased (whether for himself or some one else) was under a legal incapacity to purchase at the sale in question. (6) that the accused then knew of such incapacity.

It will also be sufficient to prove (1), (2) and (3) as above; and further (4) that the accused bid for such property. (5) that, when bidding, he intended not to perform the obligations under which such bidding placed him.

S. 186 I. P. C:—Obstructing public servant in discharge of public functions.

Evidence:—Prove (1) that the person obstructed is a public servant. (2) that at the time of obstruction he was discharging his public functions. (3) that the accused obstructed him in the same. (4) that he did so voluntarily.

S. 187 I. P. C:— Omission to assist public servant when bound by law to give assistance.

Evidence:—Prove (1) that the person requiring assistance is a public servant. (2) that he was then in the execution of his duties (3) that the accused was legally bound to render or furnish assistance to him. (4) that the accused omitted to give assistance. (5) that he did so intentionally.

Or prove (1), (2) and (3) as above, and further (4) that such assistance was required (a) for the purpose of executing the process (lawfully issued) of a court of justice; or (b) to prevent riot or affray; or (c) to apprehend a person, such person having been charged with an offence or being guilty thereof, or such persons having been charged with an offence or being guilty thereof, or such persons having escaped from lawful custody. (5) that such assistance was demanded of accused by such public servant who was legally competent to make such demand. (6) that the accused omitted to give assistance. (7) that he omitted to do so intentionally.

The assistance under S. 187 I. P. C., which a private person is bound to render to a public servant is specified in Ss. 42, 77 and 128 Cr. P. C.

It is not necessary to prove that the written order under which the public servant was acting was actually shown to the accused. It was sufficient that the public servant had the order with him and could show it to any body who wanted to see the same or question his authority. 19 Cr. L. J. 641, 45 I. C. 833.

Proof of mala fides of the person obstructing the public servant is not necessary to sustain a conviction under S. 186 I. P. C. I weir. 134.

The assistance which a private person is bound to give must be specific.

A Magistrate orders B to "find a clue" to a case of theft within 15 days, such an order is illegal. 3 A. 201.

S. 188 I. P. C:—Disobedience to order duly promulgated by public servant.

Evidence:—Prove (1) the promulgation of the order. (2) that it was promulgated by a public servant. (3) that such public servant was lawfully empowered to promulgate the same. (4) that such order directed the accused to abstain from a certain act, or to take certain order &c., (5) that the accused knew of such direction to him (6) that he disobeyed such direction. (7) that such disobedience caused, or tended to cause obstruction, annoyance or injury, or risk of the same to a person lawfully employed; or that such disobedience caused, or tended to cause, danger to human life, health or safety; or that such disobedience caused, or tended to cause, a riot or an affray.

To constitute an offence under S. 188, it is necessary to show (1) a lawful order promulgated by a public servant; (2) knowledge of the order and disobedience of it; and (3) the result that is likely to follow from such disobedience. 4 C. W. N. 226; 12 W. R. 49.

It is necessary that the order should be directed to the accused. 7 C. L. R. 291, 12 C. L. R. 231, 3 B. L. R. 13. A general order also is quite sufficient. 13 C. 175.

When an order has been duly made and promulgated, although not strictly in accordance with the terms of the law, and has been brought to the actual knowledge of the person sought to be affected by it, that is sufficient to bring the case under S. 188 I. P. C. 16 C. 9.

The operation of S. 188 I. P. C., is limited to the Promulgation by public servants of the public orders relating to safety, health or convenience of the public. 16 Cr. L. J. 668, 30 I. C. 652, 17 B. L. R. 676.

Prosecution under S. 188 should not be sanctioned unless all elements necessary for conviction are proved. 57 I. C. 915.

Under S. 487 Cr. P. C., the Magistrate whose order is disobeyed is not competent to try the case. 23 C. W. N. 520, 29 C. L. J. 382, 20 Cr. L. J. 557, 51 I. C. 845.

There can be no prosecution under S. 188 I. P. C., for disobedience of an order under S. 144 Cr. P. C., where no such disturbance as is prohibited by the order, is caused. 22 C. W. N. 599. 19 Cr. L. J. 739, 46 I. C. 515.

A Magistrate who has passed an injunction under S. 144 Cr. P. C., without inquiry, cannot take cognizance of an offence under S. 188 I. P. C. 20 C. W. N. 981, 17 Cr. L. J. 464, 36 I. C. 144.

A verbal order to remove an obstruction under S. 133 Cr. P. C. has not the effect of a final order under S. 137 Cr. P. C., and a person disobeying such an order is not guilty of an offence under S. 188 I. P. C. 16 Cr. L. J. 24, 26 I. C. 328.

The word 'promulgated' in S. 188 I. P. C., refers to orders passed under the Cr. P. C., and disobedience to an injuction issued by a civil court is not punishable under that section.

39 M 543, 17 M. L. J. 391, 2 L. W. 410, 16 Cr. L. J. 592, 30 I. C. 144.

The proper remedy for such disobedience is to take action for contempt. 8 B. L. R. 638; 11 Cr. L. J. 56.

Where an order under S. 145 Cr. P. C., is illegal by reason of the Magistrate not complying with the provisions thereof, a person disregarding the order cannot be punished under S. 188 I. P. C. 14 Cr. L. J. 63, 18 I. C. 351.

An order issued by a Police Sub-Inspector to a Station-Master directing him to detain certain goods suspected to be stolen is irregular. The Sub-Inspector should in such cases act under S. 550 Cr. P. C., and seize the suspected goods. 15 Cr. L. J. 177, 22 I. C 753.

S. 189 I. P. C :—Threat of injury to public servant.

Evidence:—Prove (1) that the accused held out the threat. (2) that such threat was of injury. (3) that the person threatened was a public servant, or some person in whom the accused believed such public servant was interested. (4) that the purpose for which such threat was held out, was to induce such public servant to do, or to forbear, or delay doing an act, connected with the exercise of his public functions.

Where the accused more than once, and in a loud tone, said to the Magistrate and other Police officers that he and others would obstruct the carrying of a Hindu god along the road; even though a riot might take place it was held that he was guilty of the offence under S. 189 I. P. C. 14 C. W. N. 234.

It is essential to prove the exact word used by an accused in threatening a public servant in order to enable the court to ascertain whether in fact a threat of injury to the public servant was really made by the accused. 8 A. 380.

Before an offence under S. 189 can be made out, it must be shown that there was a threat of injury to a public servant for the purpose of inducing him to do any act or forbear or delay to do any act connected with the excercise of his public functions. A process-server has no right to enter into a

house without obtaining permission of the owner. Merely abusing the process-server therefore will not constitute an offence under S. 189 I. P. C. 39 M 561, 28 M L. J. 505, 2 L. W. 463, 17 M. L T. 389, 1915 M. W. N. 365, 16 Cr. L. J. 477, 29 I. C. 109.

Ss. 190 I. P. C:—Threat of injury to induce person to refrain from applying for protection to public servant.

Evidence:—Prove (1) that the accused held out the threat. (2) that such threat was of an injury. (3) that the purpose for which such threat was held out, was to induce the person threatened, to refrain or desist from making a legal application for the protection against some injury. (4) that the person to whom such legal application was about to be made was a public servant. (5) that such public servant was legally empowered as such, to give the protection, or to cause the same to be given.

The object of S. 190 is to prevent persons from terrorising over others with a view to desist from seeking the protection of public servants for any injury.

Where a clergyman knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that the clergyman had committed an offence under S. 190. 8 M 140.

False evidence and offences against public justice.

Ss. 191 to 229 I. P. C.,

Offences under these sections fall into two groups.

(1) Giving or fabricating false evidence Ss. 191 to 200.

(2) Offences against public justice. Ss. 201 to 229.

S. 191 I. P. C:—Giving false evidence.

Prove:—(1) A person must be legally bound by an oath, or any express provision of law, to state the truth; or he must be bound by law to make a declaration upon any subject. (2) he must make a false statement; and (3) he must know or believe it to be false, or must not believe it to be true,

Under S. 191 it must be shown that the statement said to have been false, could not but be false. It is not sufficient to show that the probabilities are that the statement was false 10 C. W. N. 1099.

The false evidence must be intentionally false to the knowledge or belief of the person giving it. The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally a giving of false evidence. 2 W. R. 47.

If a person makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of offence under S. 191. 6 A. 626, 1 Weir. 154.

The fact that the trial in which false evidence is given is to be commenced de-novo owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence. 10 C. 604, 19 M. 375 contra 8 B. H. C. Cr. 37.

It is not necessary that the false evidence should be material to the case in which it is given. 6 W. R. 84, 19 W. R. 69, 5 B. H. C. Cr. 68.

Evidence of an accused person, illegally pardoned, cannot be used against him, or, subject him to a prosecution for giving false evidence. 10 B. 90.

Necessity of widening the scope of S. 191 and 193 is pointed out. 32 M. L. J. 402, 6 L. W. 364, 18 Cr. L. J. 785, 41 I. C. 305.

S. 192 I. P. C:—Fabricating false evidence.

For the purpose of S. 192 I. P. C., it is not essential that there should be a pending judicial proceeding at the time of the fabrication. It is enough that there is a reasonable prospect of such a proceeding and the document in question is intended to be used in such a proceeding. 22 B. 1229, 1239, 22 Cr. L. J. 23; 59 I. C. 135, 193.

Under S. 192 I. P. C., it is the intention that creates the criminal offence and not the fact as to whether under the

terms of the law the document is admissible in evidence. The correctness of the decisions on the point is open to question. 16 Cr. L. J. 620, 30 I. C. 444.

There can be no fabrication of false evidence within S. 192 if the evidence is not in itself admissible. 15 Cr. L. J. 344, 23 I. C. 696, 6 A. 42; 5 M. H. C. R. 373.

The subsequent correction or retraction of his statement in the same deposition may negative the existance of an intention to give false evidence. 14 Cr. L. J. 280, 19 I. C. 712. See also 12 Cr. L. J. 405, 11 I. C. 589.

Where a witness makes a statment which is false and at once admits, this, and states what is the real truth, he should not be prosecuted for giving false evidence. 11 I. C. 589.

To sustain a charge of perjury in respect of two contradictory statements made by a person the two statements must necessarily and irreconcilably be contradicted. 16 Cr. L. J. 14, 26 I. C. 318.

A witness who deliberately gives false evidence but who when confronted with incontestable proof of his falsehood admits it to be false, is guilty of perjury. 17 I. C. 64, 1912 M. W. N. 944.

A person who gives a false statement before the Registrar commits an offence under S. 82 (a) of the Registration Act and under S. 193 I. P. C., as the registrar has authority under S. 63 of the Registration Act to administer oath. 18 I. C. 662, 12 M. L. T. 376, 1912 M. W. N. 117.

A Police officer who fabricates a Police special diary does not commit an offence under S. 192, since such a document is not evidence under S. 170 Cr. P. C. 21 A. 159. But under Section 218 I. P. C. 21 A. 163.

S. 193 I. P. C.:—Punishment for false evidence.

Evidence:—Prove the following points for giving 'false evidence.'

(1) that the accused was legally bound to state the truth, either by an oath or by an express provision of law, or

that the accused made the declaration in question. (2) that he made such statement or declaration whilst so bound. (3) that such statement, or declaration, was made in a stage of judicial proceeding.

The statement which the accused is charged with having made before the Magistrate should be clearly proved to have been made by him (4) that the statement or declaration is false. (5) that the accused when making such statement or declaration, (a) knew it to be false, or (b) believed it to be false, or (c) did not believe it to be true. (6) that he made such false statement intentionally. If the case falls under the second part of the section it is not necessary to prove (3).

Prove the following points for 'fabricating false evidence'. (1) that the accused (a) caused a certain circumstance to exsist, or (b) made the false entry, or (c) made the document to contain a false statement. (2) that he did as in (1) intending that such circumstance, entry, or statement should appear in evidence (a) in a judicial proceeding, or (b) in a proceeding taken by law, before a public servant, or (c) in a proceeding before an arbitrator.

In the absence of a finding that the intention of the accused was that the false entry in the marriage register might appear in evidence in a judicial proceeding or some other proceeding of a like nature, no conviction can be had. (3) that the person conducting the judicial or other proceeding had to form an opinion upon the evidence in which such false evidence appeared, (4) that the accused intended that person to entertain an erroneous opinion upon the evidence. (5) that such erroneous opinion touched a point material to the result of such proceeding. It should be distinctly shown whether the evidence on which perjury is assignd, is material in respect of matters in issue in the cause. If the case falls under the second part of the section it is not necessary to prove (a) in (2).

It is essential to show that the accused gave false evidence or made a false statement intentionally and the falsity

must not be merely a matter of vagueness and doubt. 18 Cr. L. J. 772, 41 I. C. 148.

A conviction may be had under S. 193 I. P. C., even if the evidence be given in matters not judicial, but it must be proved that the false statetment was made under the sanction of law. 14 W. R. 24.

Where a person makes two contradictory statements, he may now be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false. 236 Cr. P. C.

It is not necessary that the contradictory statements must have been made at different inquiries or trials to render a person liable to conviction. 26 M. 55, 10 C. 937.

It is necessary to prove that both the contradictory statements were such that a charge of giving intentionally false evidence might have been made in regard to either of them or in regard to both of them in the alternative. 27 C. 455.

In the case of an alternative charge based upon two statements made before two different courts, the sanction of both coutrs or of the court to which both these courts are subordinate is necessary. 45 B. 834, 23 B. L. R. 1, 22 Cr. L. J. 241, 60 I. C. 593.

A finding of perjury is unjustifiable where an opportunity has not been given to the accused to explain what he meant by the two apparently contradictory statements, 3 Lah-L. J. 442.

A charge of perjury based on two contradictory statements can be successful only if the statements are necessarily and irreconcilably contradictory of each other. 1915 M. W. N. 34, 16 Cr. L. J. 14, 26 I. C. 318.

An accused cannot be convicted of perjury if at the time of making the second statement, he was not asked to explain his first deposition in the light of the second. 8 M. L. T. 86, 11 Cr. L. J. 353, 1910 M. W. N. 397, 6 I. C. 409.

No person should be convicted under S. 193 I. P. C., unless it be proved that it is impossible that the statements of the accused made on oath can be true. 5 Pat. L. J. 23, 54 I. C. 673.

If the deposition recorded does not appear to be read over to the witness in the presence of the accused, it is not admissible in evidence. 18 Cr. L. J. 1039, 42 I. C. 783.

It is doubtful whether contradictory statements made in one and the same deposition can be the subject of a prosecution for perjury. 17 Cr. L. J. 240, 34 I. C. 656. 10 C. 937, 26 M. 55, and 1 Weir 166 Ref.

For the purpose of S. 192 or 193 I. P. C., execution proceedings are judicial proceedings. It is not essential that the judicial proceeding in which a person intends to use the false evidence should be pending at the date of the fabrication. 45 B. 668, 22 B. L. R. 1239, 22 Cr. L. J. 49, 59 I. C. 193.

A statement recorded by a Magistrate in the course of police investigation under Cr. P. C. S. 164 is not evidence in a stage of a judicial proceeding. The statemant can be linked with a statement which is evidence in a judicial proceeding following the investigation and then the two can be treated as a series of acts on which an alternative charge can be framed. 45 B. 834, 23 B. L. R. 1, 22 Cr. L. J. 241, 60 I. C. 593 Contra 29 M. 89; 3 Cr. L. J. 370. Vide Page 27 vol. I.

A court holding a preliminary inquiry under S. 476 Cr. P. C. is a stage of a judicial proceeding under Explanation 2 of S. 190 I. P. C., and a person giving false evidence in the course of it commits an offence under S. 195 I. P. C. 37 C. 52.

By any stage of judicial proceeding is meant any step taken by the court in the course of administration of justice in connection with a case pending. 3 C. W. N. 81.

If false evidence is given in a "judicial proceeding" it is punishable under the first part of S. 193 I. P. C., other wise it is punishable under the second part of the section. 14 W. R. Cr. 24.

A mere irregularity in judicial proceedings does not alter their character as such. 10 C. 604.

A question put to a witness in a trial for offences under S. 379 I. P. C., whether his father had been bound down under S. 107 Cr. P. C., is irrelevant and a false answer given to such a question does not render him liable for perjury. 22 Cr. L. J. 568, 62 I. C. 584.

If the false evidence consists in giving two contradictory statements, one of which must be false, but it is impossible to decide which is false, there may be a conviction in the alternative. 21 W. R. Cr. 72, 7 A 44.

The term 'fabrication' refers to the fabrication of false evidence; and if the evidence fabricated is intended to be used in a judicial proceeding, the offence has been committed as soon as the fabrication is complete; it is immaterial that the judicial proceeding has not yet been commenced 2 A. 105.

The mere fabrication is punishable under S. 193 I. P. C., the use of the fabricated article is punishable under S. 196.

The evidence fabricated must be admissible evidence. 6 A 42, 5 M. H. C. 373, 21 A. 159, 10 C. L. R. 433.

There is no fabrication if evidence fabricated is not admissible. 6 A. 42, 21 A. 159.

A conviction may be had under S. 193 I. P. C, even if the evidence be given in matters not judicial, but it must be proved that the false statement was made under sanction of law. 14 W. R. 24.

In perjury cases, the administration of oath to the accused should be proved by the prosecution like any other fact. 20 Cr. L. J. 370, 50 I. C. 978.

The only evidence in a case under S. 193 I. P. C., regarding the statement made by witnesses including the fact of their having taken an oath, is the record of deposition prepared by the Magistrate. That record only is admissible under S. 91 I. E. A., read with S. 80 of that Act. 19 Cr. L. J. 169, 43 I. C. 585.

An offence under S. 193 I. P. C., is an offence against public justice. The person best qualified to say whether a prosecution should not be instituted is the Judge before whom the evidence was given and who had considered all the facts of the case. 9 A. L. J. 538, 13 Cr. L. J. 496, 15 I. C. 496.

It is unusual and not a proper procedure for an Appellate court which did not hear the evidence to order a prosecution for perjury in the lower court for materials which were not before that court and which the witness had no opportunity of explaining while in the box. 10 C. W. N. 193.

Every item of forgery or perjury must be separately charged by independent evidence of user in each document. 14 C. L. J. 652, 13 Cr. L. J. 62, 13 I. C. 398.

The making of any number of false statements in the same deposition, is one aggregate case of giving false evidence. A separate charge need not be drawn in respect of every single utterance of the accused which is alleged to be false. 36 C. 808, 9 C. L. J. 690, 13 C. W. N. 942, 10 Cr. L. J. 150, 2 I. C. 697.

In prosecutions for giving false evidence the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. 5 A. 17, 11 W. R. 16, 6 M. 252, 10 C. 405.

Proceedings under S. 476 Cr. P. C., should not be taken against a person for giving false evidence or fabricating false document under S. 193 I. P. C., until the case in which the said evidence was given or such document was used, has been finally decided. 3 C. L. J. 302.

S. 194 I. P. C:—Giving or fabricating false evidence with intent to procure conviction of capital offence.

Evidence:—Prove the same points as for Sec. 193, and further:—

That accused when giving or fabricating the same, intended thereby to cause, or knew that it was likely he would thereby cause the person in question to be convicted of the

capital offence under the Indian Penal Code, or under the English Law.

For the second clause prove further (1) that capital punishment was carried into effect; and clause (2) that the person executed was an innocent person.

To constitute an offence under S. 194 I. P. C, intention to cause conviction is necessary. A person giving false evidence before a Magistrate holding a preliminary inquiry into a charge of murder does not commit the offence under this section. He may be guilty under S. 193 I. P. C, P. R. 32 of 1886. 3 B. L. R. 35.

It is not necessary under S. 194 I. P. C, that the false evidence which is given should be evidence given in a court of justice. Such statement, in the opinion of the Calcutta High Court, even if made to a Police officer, will amount to the offence of giving false evidence, provided that the court can infer that it was the intention of the accused to stick to the false evidence right up to the trial of the case. 29 W. R. 41.

But the Bombay High Court has held that as the words "in any stage of judicial proceeding" occuring in S. 193 I. P. C. are not repeated in this section, the latter, therefore, refers only to the final stage, that is, the trial of the case.

Unreported Cr. C. 80 R. of 1874.

Where an accused had in a preliminary inquiry before a Magistrate, made a deposition in which he falsely stated that he had seen the persons charged before the Magistrate in the act of committing a murder, it was held that this section was inapplicable, as the natural consequence of such false evidence would be nothing graver than a committal of the persons charged to the court of Sessions, and not necessarily a conviction, and it must be presumed that the accused intended the natural, that is, the ordinary consequences. Unreported Cr. C. 30 of 1874.

S. 195 I. P. C:—Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

Evidence :—Prove the same points as for S. 193, and further that the accused when giving or fabricating the same, intended thereby to cause, or knew that it was likely he would thereby cause the person in question to be convicted of an offence punishable with transportation for life (or imprisonment for a term of seven years or upwards) under the I. P. C, or the English Law.

Where a prisoner was convicted under S. 195 I. P. C. for burning his house with the object of getting another convicted of the offence, and the act was done in a most open manner, and no complaint was made by the prisoner, it was held that the conviction could not be upheld, because there was no evidence of intention to convict. 5 N. W. P. 188.

In the case of a person who burnt his own house, and charged another with the act, it was held that he should not be convicted under S. 195 I. P. C., but under S. 211. 8 W. R. 65.

Where A with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under S. 195. 1 A. 379.

Where false coins were made by the accused only for the purpose of passing them secretly into the house of his enemy in order to get him into trouble, it was held that he had committed an offence under S. 195 I. P. C., although he was guilty under S. 232 or 235 I. P. C. P. W. R. No 17 of 1912.

To sustain a conviction it is not only necessary to prove that the accused spoke falsely, but also that he knew he was speaking falsely. 6 M. L. T. 91, 10 Cr. L. J. 7, 2 I. C. 431.

S. 196 I. P. C :—Using evidence known to be false.

Evidence :—Prove (1) that the piece of evidence in question is false or fabricated. (2) that the accused used, or attempted to use such false or fabricated piece of evidence. (3) that he used, or attempted to use such evidence, as true or genuine evidence. (4) that when the accused used such evidence

or attempted to do so, he knew it to be false or fabricated. (5) that when the accused so used, or attempted to do so, he acted corruptly.

'Corruptly' in S. 196 connotes a motive not necessarily connected with the passing of money as an inducement, and an intention to procure a false conviction is a corrupt intention.

15 Cr. L. J. 344, 28 I. C. 696, 139 P. L. R. 1914.

A mere attempt to get a medical certifiate which is refused does not fall under S. 196. 17 Cr. L. J. 388, 35 I. C. 820.

Where a Patel produced a forged cattle pound receipt to prove the defence of Alibi which was disbelieved is guilty of corruptly using false evidence under S. 196 I. P. C. 23 B. L. R. 987.

Production of a copy of a false document in an attempt to use the original within the meaning of S. 196 I. P. C. 4 Cr. L. R. 349, 23 I. C. 696.

Evidence does not include a document. Where the accused used in a civil suit a document as genuine which he knew to be a forged document it was held that he should be charged under S 471 and not under S. 196 I. P. C. 5 C. 717 contra 7 M. 289, 7 A. W. N. 285. But swearing to the authenticity of such document is punishable under this section. 3 W. R. 17.

Using and attempting to use false evidence are distinct offences and should be charged separately. 2 W. R. (Cr. L) 9.

S. 197 I. P. C:—Issuing or signing false certificate.

Evidence:—Prove (1) that the document in question purports to be a certificate. (2) that such certificate is required by law to be given or signed, or that it related to some fact of which such certificate is by law admissible in evidence. (3) that such certificate is false. (4) that it is false in a material point. (5) that the accused issued or signed the same. (6) that he, when doing so, knew, or believed, such certificate to be false.

The certificate referred to in S. 197 I. P. C., must be false in respect of a material point. Falsity in any respect will be of no avail. The issuing or signing must be by the officer or person authorised to certify.

Under S. 197 I. P. C., proof of intent to cause injury is not necessary. P. R. No. 15 of 1879.

A copyist who made an incorrect copy of a document filed with a record was held to have committed an offence under this section. P. R. No. 15 of 1879.

A person who had his name registered by an application under the Bengal Land Registration Act, alleging that the real person is dead, is not liable to be prosecuted under S. 197 I. P. C. as the Act does not require a certificate to be signed or given. 18 Cr. L. J. 978, 42 I. C. 594.

S. 198 I. P. C :— Using as true a certificate known to be false.

Evidence :—Prove points (1), (2), (3) and (4) as in S. 197, and further—(5) that such false certificate was signed or issued. (6) that the accused used or attempted to use such false certificate. (7) that he did so corruptly. (8) that he, when using such false certificate, knew it to be false in a material point.

This section is connected with S. 197 I. P. C., just as S. 196 is connected with Ss. 193, 194 and 195 I. P. C.

A signed petition filed in court is not a certificate under S. 197 and 198 I. P. C. The word certificate in Ss. 197 and 198 has not the force of certification. 20 C. W. N. 520, 23 C. L. J. 423, 17 Cr. L. J. 140, 33 I. C. 316.

S. 199 I. P. C :—False statement made in declaration which is by law receivable as evidence.

Evidence :—Prove (1) that the accused made, or subscribed the declaration in question. (2) that a court of Justice, &c., was bound, or authorised to receive such declaration as evidence. (3) that the accused made the statement in question contained in such declaration. (4) that such statement is false. (5) that such false statement touched a point material to the

object of such declaration. (6) that when making such false statement, the accused knew that it was false, or believed it to be false, or did not believe it to be true.

S. 199 I. P. C., deals with voluntary false declarations and S. 191 I. P. C., with compulsary declarations.

If the court or public servant is not authorised by any provision of the law, or any rules having the force of law, to receive a declaration in evidence but does receive one, the person making it will not be liable. 14 C. 653, 20 C. 724; 17 B. L. R. 222.

Accused made a false declaration before a Mamlatdar with a view to obtain a certificate of solvency for the purpose of securing a license from Abkari authorities. Held, that no offence was committed under Sec. 199 I. P. C. inasmuch as no Court of justice or any public servant was either bound or authorised by law to receive the declaration in evidence. 17 Bom. L. R. 222., 16 Cr. L. J. 309, 28 I. C. 645.

A person making on oath a false statement in the nature of an affidavit in the course of a criminal proceeding before a Magistrate having no power to administer an oath; 14 C. 653, a person making a statement which is not evidence for him but against him, 22 C. 131; and a person in whose petition a false averment is made, such petition not being signed by himself but by his pleader, 7 C. L. R. 536; are held to have committed no offence under S. 199 I. P. C.

A declaration, before it can be made the basis for a prosecution under Sec. 199 must satisfy the test of admissibility 35 A. 58, 13 Cr.L. J. 769, 10 A. L. J. 462, 17 I. C. 401.

Under sec. 199, I. P. C. a statement must be one which is either false to the knowledge of the person making it or which he ought to have known to be false or could not have believed to be true. Statements made in a reckless or hap-hazard manner, though untrue in fact do not constitute an offence under the section when the person making them immediately admits the mistake and corrects them. 18 Cr. L. J. 636, 6 L. W. 241, 22 M. L. T. 298, 33 M. L. J. 545, 39 I. C. 1004.

This section has no reference to the examination of the witness in a judicial proceeding. 4 M. H. C. 185.

S. 200 I. P. C :—Using as true such declaration, knowing it to be false.

Evidence :—Prove (1) that the declaration is false. (2) that a Court of Justice, &c., was bound or authorized by law to receive the same in evidence. (3) that such declaration is false in a material point. (4) that the accused made such false declaration, or attempted to do so. (5) that he did as in (4) corruptly. (6) that when so used or attempted to use the same, he knew of its falsity thereof.

This section bears the same relation to S. 199 I. P. C., as S. 198 I. P. C., bears to S. 197 I. P. C.

The person who uses a false declaration is made liable as one who makes it.

S. 201 I. P. C:— Causing disappearance of evidence of offence, or giving false information, to screen offender.

Evidence :—Prove (1) that an offence has been committed. Mere rumour of suspicion is not sufficient. (2) that the accused knew, or had reason to believe that such offence has been committed. (3) that the accused caused evidence thereof to disappear ; or gave false information respecting such offence knowing or having reason to believe, the same to be false. (4) that the accused did as in (3) with intent to screen the offender from legal punishment. The following must be proved as an aggravating circumstance. (5) that the offence in question was punishable with death, or transportation for life, or with imprisonment extending to ten years.

The section applies merely to person who screens the principal or actual offender and not to one causing disappearance of his own crime. 22 C. 638 Distd. Rat Un. Cr. 799 Doubt. 47 I. C. 275, 19 Cr. L. J. 903, 46 C. 427.

It applies to persons other than the actual criminals who, by their causing evidence to disappear assist the principals

to escape the consequences of their offence. 8 A.[252, 27 M 271, 7 W. R. 52.

There are three groups of sections in the code relating to the giving of information. First, Ss. 118—120; secondly Ss. 176, 177, 181, 182; and thirdly, Ss. 201—203.

The section relates to the destruction of any evidence of the commission of an offence, and includes also the giving of false information with the intention of screening an offender. Ss. 202 and 203 relate to the giving or omitting to give such information, and S. 204 I. P. C., to the destruction of documentary evidence.

Further Ss. 202 and 203 I. P. C., refer only to cases where offences have actually been committed, and the motive of the accused is immaterial. 1 W. R., 18.

Whereas under Ss. 118 to 120, the fact concealed is a design to commit an offence, and the motive is to facilitate the commission thereof. Ss. 176 and 177 are much wider, in as much as they refer to "information on any subject," and under S. 182 the motive to cause a public servant to use his lawful powers to the injury or annoyance of others.

A person who gives false information to Police accusing another of an offence of murder in order to screen the real offender commits offences not only under Ss. 201 and 203 I. P. C, but also under S. 211 I. P. C. 46 C. 427, 19 Cr. L. J. 903, 47 I. C. 275.

A person cannot be convicted of screening an offender when the offender himself has been tried and acquitted of the offence. 3 A. 279.

The removal or the concealment of the body of a person not proved to have been murdered, but proved to have committed suicide does not amount to an offence under S. 201 I. P. C. 12 Cr. L. J. 425, 11 I. C. 609.

For an offence under S. 201, it is not necessary to prove complete destruction of evidence. So an offence under

the section is committed if the corpse of a man is buried with intent to conceal the fact. 13 Cr. L. J. 18, 13 I. C. 210.

A separate sentence under S. 201 I. P. C., along with a conviction of the accused of murder is illegal. 16 Cr. L. J. 583, 30 I. C. 135.

S. 202 I. P. C:—Intentional omission to give information of offence by person bound to inform.

Evidence:—Prove (1) that the offence, which was not informed about, has been committed. (2) that the accused knew, or had reason to believe, that such offence had been committed (3) that he omitted to give information thereof. (4) that such omission was intentional. (5) that the accused was legally bound to give the information which he omitted to give.

S. 202 deals with the negative offence of not giving any information.

This section punishes the illegal omissions of those who are by some law bound to give information, when such omissions are intentional. The offence under it will generally be committed by public servants and private persons bound to give information under Ss. 44 and 45 Cr. P. C.

There can be no conviction for intentional omission to give information respecting an offence which has not been proved to have been committed. 4. W. R. 29; 1 Weir 181.

A person witnessing a commission of an offence and failing to give information to the nearest Magistrate or Police officer as required by S. 44 Cr. P. C., is guilty of an offence under S. 202 I. P. C. 21 Cr. L. J. 486, 56 I. C. 582.

An offence under S. 202 is not a minor one included under S. 201. The requisite for an offence, under S. 202 is the duty of the accused to give information of the offence which is not required under S. 201. So if a person is charged under S. 201 he cannot be convicted under S. 202 without a charge being framed under that section. 13 Cr. L. J. 18, 13 I. C. 210.

S. 203 I. P. C:—Giving false information respecting an offence committed.

Evidence:—Prove (1) that an offence has been committed. (2) that the accused knew, or had reason to believe, that such offence has been committed. (3) that he gave the information. (4) that such information was with respect to that offence. (5) that the information so given is false. (6) that when he gave such information he knew or believed it to be false.

The section does not include false evidence given to Police in answer to question put to him but includes only information volunteered by some person. 7 A. L. J. 115, 7 I. C. 50. 11 Cr. L. J. 438, see also 20 W. R. 66.

The section applies where information is voluntarily given and not when it is extracted by Police in an examination. 57 I. C. 940.

Statements of the accused examined as witnesses under S. 164 of the Criminal Pro-code do not amount to information within S 203. 'Gives information' means volunteers information. 14 Cr. L. J. 252, 19 I. C. 508.

See chapter 6. (Prosecution for false complaints).

S. 204 I. P. C:—Destruction of document to prevent its production as evidence.

Evidence:—Prove (1) that the accused secreted or destroyed the document; or that he obliterrated, or rendered illegible, the whole, or any part of such document. (2) that he was lawfully compellable to produce the same as evidence (*a*) in a Court of Justice; or (*b*) in proceedings lawfully held by a public servant. (3) that he did as in (1), with the intention of preventing the same from being produced or used as such evidence; or that he did as in (1) after he had been lawfully summoned or required to produce the same for that purpose.

Under this section the act must be done with the intention of preventing the document from being produced or used as evidence. There is no question of the materiality of the evidence. Whether material or not, it must not be secreted or destroyed to evade production in a judicial or other proceedings if the production may be lawfully compelled.

Destruction by Police officer of rough copy of Panchnama after preparation of a fair one is no offence. 14 B. L. R. 1163, 17 I. C. 1008. 13 Cr. L. J. 912.

Where a Police officer took down at first the report of the commission of dacoity made to him, but subsequently destroyed that report and framed another and made a false report of the commission of a totally different offence, he was held guilty of the offence under S. 204 I. P. C. 20 A. 307.

S. 205 I. P. C:— False personation for purpose of act or proceeding in suit or prosecution.

Evidence :— Prove (1) that the accused falsely personated the person in question. (2) that he made such admission. &c., (3) that he made such admission. &c., in such assumed character. (4) that such admission. &c., was made in a suit, or criminal prosecution.

Offence under S. 205 I. P. C., is committed, even though the individual personated consents to the personation. Any fraudulent gain or benefit to the offender is not an essential element. 1 M. H. C. 450, 1 Weir 182, 5 B. L. R. 138.

The offence of personation is dealt with in S. 205 and in Ss. 140, 170 and 171. I. P. C.

It is necessary that the accused should have assumed the name and character of the person he is charged with having personated. 8 W. R. 80.

It is no offence under S. 205 I. P. C., if a person personates a purely imaginary person. The gist of the offence under the section is the feigning to be another known person, 4 M. H. C. 18, 19.

Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before the Magistrate, it was held that A was guilty of an offence under S. 205 I. P. C. and B was guilty of abetment. 1 M. H. C. 450.

Where A presented a petition in the name of B who was ill, it was held that A was not guilty, because of the mere fact of A to falsely personate B. 8. W. R. 80.

S. 206 I. P. C:—Frandulent removal or concealment of property to prevent its seizure as forfeited or in execution.

Evidence :— Prove (1) that the sentence of fine had been, or was to the knowledge of the accused likely to be pronounced; or that the decree or order had been, or was to the knowledge of the accused likely to be made. (2) that it was a Court of Justice or other competent authority pronouncing or about to pronounce such sentence; or that it was a Court of Justice making or about to make such decree or order; such decree or order being in a Civil suit. (3) that the property in question or interest therein had become, or was likely to become, liable to be taken as a forfeiture of such fine, or taken in execution of such decree or order. (4) that the accused removed, concealed, transferred or delivered such property or interest therein with intent thereby to prevent such property from being taken. (5) that he did as above with intent to defraud.

Ss. 206, 207 and 208 deal with instances of collusive modes by which creditors or lawful claimants, may be defeated of their just remedies. Ss. 421–424 I. P. C., deal with fraudulent transfer.

The offences Ss. 206–208 I. P. C. may be committed by any one and not necessarily by the owners of the property. There must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. 18 W. R. 65.

Sale of motor-car bought under hire-purchase agreement in breach of conditions thereof and after decree obtained against accused is an offence. 40 I. C. 728, 18 Cr. L. J. 728.

But a person who makes over to another his own property not legally liable for the decree from confusion with what is so liable, commits no offence. 19 B. L. R. 535, 18 Cr. L. J. 784, 41 I. C. 160.

Where an offence under S. 206 I. P. C., was taken cognizance of by a Magistrate without sanction for the prosecution being given, but there was nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice, it was held that the conviction was not bad only on that account. 28 C. 217.

The cutting and carrying of crops, which the accused knew to be under attachment, in execution of a certificate under the Public Demands Recovery Act (Act 1 of 1895), was held to be an offence under the latter part of S. 206 I. P. C. 28 C. 217.

S. 207 I. P. C.—Fraudulent claim to property to prevent its seizure as forfeited or in execution.

Evidence :—Prove (1) that the sentence of fine had been, or was to the knowledge of the accused likely to be pronounced; or that the decree or order had been, or was to his knowledge, likely to be made. (2) that it was a Court of Justice, or other competent authority, pronouncing, or about to pronounce such sentence; or that it was a Court of Justice making, or about to make, such decree or order in a civil suit. (3) that the property in question or interest therein had become, or was likely to become, liable to be taken as a forfeiture for such fine; or taken in execution of such decree or order. (4) that the accused accepted, received or claimed such property or interest with intent to defraud; or that he practised a deception touching the right thereto. (5) that he then had no right or rightful claim thereto. (6) that he then knew he had no right or rightful claim

thereto. (7) that he did as above in order to prevent such property or interest from being so taken.

S. 207 I. P. C:—deals with the receiver, acceptor, or claimer of property to prevent its seizure as a forfeiture. It punishes the accomplice just as the preceding section punishes the principal offender.

An application for execution of a decree, which is re-issued, is not an offence under this section. 23 C. 971.

S. 208 I. P. C:—Fraudulently suffering decree for sum not due.

Evidence:—Prove (1) that the accused caused, or suffered, the decree or order to be passed against him. (2) that such decree or order was for a sum not due by accused; or for a sum larger than due; or for property or interest therein to which the decree-holder was not entitled. (3) that the accused did as in (1) with intent to defraud.

Or prove the following points:—

(1) that a decree against the accused had been satisfied. (2) that he, afterwards, caused or suffered such decree or order to be executed against him. (3) that such execution was for that in respect of which it had been so satisfied. (4) that the accused did as above with intent to defraud.

The Section punishes persons making fictitious claims in order to secure the property of the defendant against persons to whom he may become indebted in future.

Fraud is the essence of the offence.

S. 209 I. P. C:—Dishonestly making false claim in Court.

Evidence:—Prove (1) that the claim in question was made in a Court of justice. (2) that the accused made such claim. (3) that such claim was a false one. (4) that accused when making such claim knew it to be false. (5) that he made such claim, intending to defraud, or to cause wrongful gain or loss, or annoy the person in question.

Under S. 209 I. P. C., not only the claim must be false within the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain to injure or to annoy. The section punishes the making of a false claim. The offence will be complete as soon as a suit is filed.

An attempt to execute a decree cannot correctly be described as a false claim. 12 W. R. 37.

Making false claim in civil court is not extortion but only an offence under S. 209 I. P C. 20 O. C. 129.

Even if part of claim is false, it is an offence. 1890 A. W. N. 1.

It is not sufficient that the accused believed or had reason to believe the claim to be false, or did not believe it to be true but it must be proved that he knew it to be false. 38 P. R. Cr. 1888.

S. 210 I. P. C.—Fraudulently obtaining decree for sum not due.

Evidence.—Prove (1) that the accused obtained the decree or order or suffered or permitted the same to be done in his name. (2) that such decree or order was for a sum not due; or that it was for a sum larger than what was actually due; or that it was for property, or an interest therein, to which he was not entitled. (3) that the accused did as above with intent to defraud. Or prove the following points:—(1) that the accused obtained the decree or order. (2) that he obtained satisfaction thereof. (3) that after obtaining such satisfaction, he caused such decree or order to be executed, or suffered, or permitted the same to be so done in his name. (4) that such execution was so obtained, &c., or that in respect of which it had been so satisfied. (5) that the accused did as above with intent to defraud.

An offence under the section is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there was no fraud, is not a bar to a prosecution. 33 C. 193.

If there is a mistake through misunderstanding but not fraud, no offence under this section is committed.

1914 P. L. R. 64.

Merely the presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it has been satisfied. 23 C. 971, 12 W. R. 37.

The 'decree' or 'order' must be that of a Civil Court or a Revenue Court. The orders of a criminal court are merely declaratory and do not therefore come within S. 210.

A prosecution under S. 210 I. P. C., does lie even though the representative of the judgment-debtor making the payment has not been prejudiced and there is no satisfactory proof of payment. 4 P. W. R. 1917, 53 P. L. R. 1917.

S. 211 I. P. C:—False charge of offence made with intent to injure.

Evidence:—Prove (1) that the accused instituted or caused to be instituted the criminal proceedings; or that he made a charge of an offence. (2) that there were no just or lawful grounds for such proceedings; or that such charge is false. (3) that the accused then knew such criminal proceedings or charge to be without just or lawful grounds. (4) that he did as above with intent to cause injury to the person in question. It is for the prosecution to make out a distinct case against the accused; not for the accused in the first instance to show that he had just or lawful ground. The party accused should be allowed to show the information on which he acted and the judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.

A conviction by a Magistrate of a person of an offence under S. 211 I. P. C., in a summary proceeding is improper.

28 C. 251. See Chapter 6. (Prosecution for false complaint).

A person cannot be convicted of an abetment of false charge solely on the ground of his having given evidence in support of such charge. 9 B. L. R. App. 16.

S. 212 I. P. C :—Harbouring offender.

Evidence :—Prove (1) that an offence has been committed by the person harboured. (2) that such offence is punishable with (*a*) death, or (*b*) transportation for life or imprisonment not exceeding ten years, or (*c*) imprisonment from one to ten years. (3) that the accused has harbou red or concealed the offender. (4) that the accused then knew him to be an offender, or had reason to believe him to be so. (5) that the accused thereby intended to screen such offender from legal punishment.

S. 212 I. P. C :—applies to the harbouring of persons who have actually committed some offence under the Penal code or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards.

A mere giving of food and shelter as a matter of humanity to a person in distress is not punishable. 12 A. 432.

S. 213 I. P. C :—Taking gift, &c., to screen an offender from punishment.

Evidence :—Prove (1) the commission of the offence concealed. (2) that the accused (*a*) concealed such offence ; or (*b*) screened the offender from legal punishment ; (*c*) or omitted to proceed against such offender so as to bring him to punishment. (3) that the accused accepted, or attempted to obtain, or agreed to accept the gratification or restitution, as described in the section. (4) that the accused so accepted, &c., in consideration of such concealment &c., as (2).

The words concealing and screening in this section and that in S. 214 I. P. C., presuppose an actual commission of an offence or the guilt of the person screened and where there is no such principal offence there can be no subsidiary offence under the two sections. 14 M. 400, 12 A. 432 Rel. on.

Where a person has been tried and acquitted of the principal offence, it is not open to another court to hold for purposes of Ss. 213 and 214 I. P. C., that the offence was committed. 37 B. 658, 15 B. L. R. 694, 14 Cr. L J. 453, 20 I. C. 613. 38 C. 569 Rel. on.

For a conviction under the above sections, it is essential that the screened offences should first be proved to have been committed. 46 I. C. 424. 23 C. 420 and 37 B. 658 Fol.

S. 214 I. P. C:—Offering gift or restoration of property in consideration of screening offender.

Evidence:—Prove points (1) and (2) as in S. 213; and further— (3) that the accused gave or caused or offered to give or caused the gratification, &c., as stated in the section. (4) that he so gave or caused, &c., in consideration of such concealment, &c.,

The section punishes the offering of the gift and S. 213 punishes the receiving of a gift in consideration of compromising an offence.

Giving of gratification to a witness in a case where the accused was acquitted is no offence under the section.

14 M. 400, 1 Weir 195, 1 M. L. J. 163.

The accused in breach of forest rules worked two sawpits and when discovered by the Forest officer offered him Rs. 5 and asked him not to proceed with the case. Held, that the offer of Rs. 5 did not amount to an offence under S. 214 I. P. C., and the fact that the Forest officer was not authorised to compound the offence, did not make any difference if the offence was compoundable. 6 L. B. R. 48, 13 Cr. L. J. 574, 15 I. C. 990.

S. 215 I. P. C:—Taking gift to help to recover stolen property &c.

Evidence:—Prove (1) that the owner of the property was deprived of it by an offence under the code. (2) that the accused took, or agreed, or consented to take the gratification

(3) that such gratification was under the pretence of, or on account of, helping to recover such property. (4) that the accused failed to use all means in his power to cause the offender to be apprehended and convicted.

It is not necessary to show that the prisoner had any connection with the commission of the previous felony; it is sufficient if the evidence satisfied the Court that the prisoner had some corrupt and improper design when he received the money; and did not bonafide intend to use such means as he could for the detection and punishment of the offender.

It is necessary that the movable property in question should have been taken out of the possession of some person by means of an offence punishable under the code. 11 Cr. L. J. 295; 16 Cr. L. J. 541, 29 I. C. 669, 28 P. L. R. 1916.

A person cannot be convicted for an offence under S. 215 when he has been convicted for theft of the same. 28 I. C. 997 16 Cr. L. J. 421.

The section 215 I. P. C., does not intend to apply to the actual thief but to some one who, being in league with the thief. receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. 23 A. 81, 26 M. L. J. R. 589, 1 Weir 196. 4 L. B. R. 199. 16 Cr.L. J. 421; 28 I. C. 997.

S. 216 I. P. C:— Harbouring offender who has escaped from custody or whose apprehension has been ordered.

Evidence:— prove (1) that the person in question has been convicted of or charged with, an offence. (2) that such person was in lawful custody for the same. (3) that such person escaped from such custody. (4) that the accused knew of such escape. (5) that he with such knowledge, harboured, or concealed such offender, (6) that he did so, with intention to prevent him from being apprehended. (7) that the offence in question was punishable with (a) death, or (b) transportation for

life or imprisonment for ten years, or (c) with imprisonment from one to ten years.

Or prove the following points:—

(1) that a person had been ordered to be apprehended, (2) that such order was the order of a public servant. (3) that such order was in the lawful exercise of his powers. (4) that the accused knew of such order for apprehension. (5) , (6) and (7) as above.

The section is an aggravated form of the offence punishable under S. 212 I. P. C.

It deals with harbouring an offender who has escaped from custody and S. 212 deals with the offence of harbouring an offender who having committed an offence absconds.

A person who harbours an offender in a house belonging to a third person and who visits him there, is liable under S. 216 I. P. C. 14 B. L. R. 583, 16 I. C. 509.

The word 'punishable' in S. 216 I. P. C., is used merely for the purpose of describing particular classes of offences in relation to which the punishment indicated in the section is to be inflicted but does not indicate that, in a particular case, the offence must not have been punished. 11 C. L. J. 109.

The essence of an offence under this section lies in harbouring a man with the object of preventing his apprehension in execution of a warrant of which the harbourer had knowledge. Mere, hiding him is not sufficient. The mere fact that the offender's name is published in the criminal Intelligence Gazette does not establish that the accused had knowledge of the fact that there was a warrant for the apprehension of the offender. 23 I. C. 701.

S. 216 A I. P. C:—Penalty for harbouring robbers or dacoits.

Evidence:— prove (1) that the persons in question were about to commit or had recently committed robbery or dacoity. (2) that the accused knew this. (3) that the accused

harboured them or some of them. (4) that the accused did so with the intention of (a) facilitating the commission of such robbery or dacoity, or (b) screening them or some of them from punishment.

The section enables a court to inflict enhanced punishment where the persons harboured are robbers or dacoits or where they intended to commit robbery or dacoity.

S. 216 B. I. P. C:—Definition of "harbour" in Ss. 212, 216 and 216-A.

Assisting a person in any way to evade apprehension does not include the assisting of an accused person to escape by merely telling a bare lie to the Police as to his whereabouts. S. 25 A. 261. The methods of assistance must be those specified in the section.

S. 217 I. P. C.—Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

Evidence:—Prove (1) that the accused is a public servant. (2) that he conducted himself in the particular manner charged. (3) that such conduct was in the exercise of his duties as such public servant. (4) that such conduct was in disobedience of a direction of law. (5) that when the accused disobeyed such direction of law, he did so knowingly. (6) that when he was guilty of such disobedience he intended to, or knew that it was likely that he would thereby, save (1) some person from punishment, or subject some person to a less punishment than that to which he was entitled, or (2) some property from forfeiture or a charge to which it was liable; or (3) that such punishment, &c., was legally enforceable, or that such forfeiture, or charge, was a legal liability.

Mere proof of knowing disobedience with the intention of saving a person from legal punishment is enough and no further proof of the actual commission of an offence by the person intended to be saved is necessary. 3 C. 412.

Retention by Police officer of gold piece found in search for stolen property but not proved to be part thereof without report of such possession to superior officer is an offence under the section. 29 I. C. 85, 16 Cr. L. J. 453.

Tearing up report of his investigation by Police officer after being informed by the parties of desire to drop proceeding is not a knowing disobedience. 15 B. L. R. 578.

Before a person can be convicted under S. 217 I. P. C., it must be shown that there is a direction of law as to the way in which he is to conduct himself as such public servant, and this direction must be a direction to be found in some positive statute or some rules or regulations which are declared by statute to have the force of law. 22 A. W. N. 16.

The actual guilt or innocence of the alleged offenders is immaterial; it is enough if the public servant believes they are guilty, and intends to screen them. 8 W. R. 68.

The words 'Legal punishment' do not include departmental punishment. 19 W. R. 40.

Where it cannot be said that a person knowingly disobeyed any direction of law as to the way in which he should conduct himself, or that he intended or knew it to be likely that by doing a certain thing he would save any person from legal punishment, he cannot be convicted under S. 217 I. P. C. 15 B. L. R. 578, 14 Cr. L. J. 441, 20 I. C. 601.

S. 218 I. P. C:—Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

Evidence:—Prove (1) that the accused is a public servant. (2) that he was charged with the preparation of record or other writing in his capacity as a public servant. (3) that he framed such record or other writing in an incorrect manner. (4) that he then knew that he was framing it in an incorrect manner. (5) that he did as above, with the intent or with the knowledge, that it was likely, that he would thereby (*a*) cause

loss or injury to the public, or any person ; or (*b*) save a person from punishment ; or (*c*) save some property from forfeiture or charge. (6) that such punishment was legally enforceable, or that such charge or forfeiture was a legal liability.

The expression 'preparation' is not restricted to the narrow meaning enjoined by a special provision of law, the preparation may be in accordance with the practice also. 27 C. 144, see also 2 M. W. N. 44.

The fabricated documents must be the records or writing with the preparation of which such public servant as such is charged, otherwise he could not be legally convicted under the section. 5 A. 553.

The intention with which the public servant does the acts mentioned in the section is an essential ingredient of the offence. 8 W. R. 27.

Intention to screen a particular person need not be proved. 23 B. L. R. 823, 22 Cr. L. J. 609, 63 I. C. 145.

The accused must not be convicted on a remote and speculative chain of possibilities. 19 W. R. 40.

Incorrect record framed without any of the objects mentioned in the section is no offence under it. A Village Munsiff who submitted a false calendar in which he purported to have convicted certain persons of theft was held not guilty under this section. 1 Weir. 197.

A pay sheet drawn by a Railway officer is a record within S. 218 I. P. C. 15 Cr. L. J. 502, 24 I. C. 590.

S. 219 I. P. C :—Public servant in judicial proceeding corruptly making report &c., contrary to law.

Evidence :—Prove (1) that the accused was a public servant. (2) that he made or pronounced the report, order, verdict or decision. (3) that he did as in (2) corruptly or maliciously. (4) that such report, order, verdict, or decision was made or pronounced in the course of a judicial proceeding. (5) that such report &c., was contrary to law. (6) that when the

accused made or pronounced the same, he knew it to be contrary to law.

S. 219 I. P. C., and S. 220 I. P. C., deal with the corrupt or malicious exercise of the power vested in a public servant for a particular purpose.

Where a Village Munsiff passed a decree which was contrary to law, it was held that he was guilty under S. 219 I. P. C., for maliciously pronouncing a decision. 15 A. L. J. R. 106, 18 Cr. L. J. 527, 39 I. C. 495.

S. 220 I. P. C:—Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Evidence:—Prove (1) that the accused held an office, which empowered him (a) to commit persons for trial; or (b) to commit persons to confinement, or (c) to keep persons in confinement. (2) that he committed a person for trial or to confinement, or kept a person in confinement, in exercise of such powers. (3) that he, in doing as above, was acting contrary to law. (4) that he at the time knew that he was acting contrary to law. (5) that he when doing as in (2) also acted corruptly or maliciously.

The section applies to those who hold certain offices and not to private persons who have, under certain circumstances the right to confine persons accused of certain offences. Private persons, if they abuse their power, cannot be dealt with under this section.

Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy requirements of the section, 9 B. H. C. 346.

Where an arrest is legal, it is not necessary to consider whether the arrest is done corruptly or maliciously or contrary to law. 10 B. 506, 7 W. R. 3.

S. 221 I. P. C:—Intentional omission to apprehend on the part of public servant bound to apprehend.

Evidence:—Prove (1) that the accused was a public servant. (2) that the person in question had been charged with an offence; or that such person was liable to be apprehended for an offence. (3) that the accused was legally bound to apprehend such person for the same. (4) that he omitted to apprehend. (5) that he did so intentionally.

Prove also that the offence with, which such person is charged &c., is punishable (a) with death; or (b) with transportation for life, or imprisonment up to ten years; or (c) with imprisonment for less than ten years.

Or prove the following points:—

(1) that the accused was a public servant. (2) that the person in question was in confinement for an offence. (3) that the accused was legally bound to keep such person in such confinement. (4) that he suffered such person to escape, or aided such person in escaping or in the attempt to escape. (5) that he did so intentionally.

A village chaukidar is not legally bound as a public servant to apprehend for murder not committed within his village. 3 A. 60 fol in 27 C. 365 and 29 A. 377; 378.

Where a police officer allowed a prisoner to escape from his custody while he was on duty as sentry, it was held that he could not be convicted under Act V of 1861, but under this section. P. R. No. 11 of 1874.

S. 222 I. P. C:—Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

Evidence:—Prove (1) that the accused was a public servant. (2) that the person in question was sentenced by a Court of Justice. (3) that such sentence was for an offence committed. (4) that such person was liable to be apprehended under such sentence. (5) that the accused was legally bound to apprehend such person. (6) that he omitted to apprehend. (7) that he did so intentionally.

Or prove the following points :—(1), (2) and (3) as above, and further (4) that such person was in confinement under such sentence (5) that the accused was legally bound to keep him in such confinement. (6) that he suffered such person to escape, or aided him in escaping or in the attempt to escape. (7) that he did so intentionally.

Prove also the following points :—

(1) that the accused was a public servant. (2) that the person in question had been committed to custody. (3) that such committal was lawful (4) that the accused was legally bound to keep him in confinement under such committal. (5) that he suffered such person to escape, or aided him in escaping, or in attempt to escape. (6) that he did so intentionally.

S 222 I. P. C, is similar to S. 221 I. P. C., with the exception that the person to be apprehended had already been convicted or committed for an offence.

S. 223 I. P. C :—Escape from confinement or custody negligently suffered by public servant.

Evidence :—Prove (1) that the accused was a public servant. (2) that the person in question was charged with or convicted of an offence. (3) that accused was legally bound to keep such person in confinement. (4) that he suffered such person to escape therefrom. (5) that he acted negligently when suffering such person to escape. Or prove (1) that accused was a public servant. (2) that the person in question had been committed to custody. (3) that such committal was lawful. (4) that the accused was legally bound to keep in confinement such person under such committal. (5) that he suffered such person to escape from confinement. (6) that he acted negligently when suffering such escape.

S 223 I. P. C., punishes a public servant who negligently suffers any person charged with an offence to escape from confinement.

This section applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested, under civil process. 12 C. 190.

The latter cases come under S. 225 A.

The public servant must be legally bound to keep in confinement. A village Policeman is nowhere authorized to take charge of convicted prisoners. Where, therefore, a convicted prisoner escaped from the custody of a village policeman, it was held that he was not guilty of an offence under this section. 1 B. L. R. 349.

Unless the custody is lawful no offence is committed. 29 A. 377.

Escape must be the natural and probable consequence of negligence. 6 M. L. T. 247.

Failure by jail warder to supervise prisoners whom he negligently allowed to do work other than that for which they had been taken out is punishable. 11 P. R. Cr. 1919.

The accused, (Policemen) were conveying a dangerous prisoner in a camel- cart, having hand- cuffed him doubly and having tied a rope round his waist. The prisoner was allowed to get down in order to answer calls of nature, whereupon he gave false alarm crying 'snake' and broke away from the constables. Held, that the constables were not guilty of an offence under S. 223 I. P. C. 15 A. L. J. 883, 19 Cr. L. J. 783. 43 I. C. 110.

For conviction under S. 223 I P.C., it must be shown not only that the accused was guilty of negligence but that the escape was at least the natural and probable consequence of his negligence. A, a Police officer in charge of a thana, left the thana with orders to the writer (head constable) to make arrangements for the escort of certain prisoners. The Head Constable made arrangements and sent the prisoners off. From the custody of the escorts the prisoners escaped: held, the escape

of the prisoners was not the natural and probable consequence of A's negligence. 7 A. L. J. 907, 11 Cr. L. J. 478, 7 I. C. 411.

As the constable arrested the accused under cover of a warrant which was bad in law not being signed by the Magistrate issuing it, the escape was not illegal. As to others who in effecting the accused's rescue caused unnecessary hurt to the constable they were guilty under S. 323 I. P. C. 5 P. L. W. 226, 19 Cr. L. J. 1000, 48 I. C. 340.

S. 224 I. P. C:— Resistance or obstruction by a person to his lawful apprehension.

Evidence:— when the offence charged is that of resistance to apprehension, prove (1) that the accused is charged with an offence (2) that he offered resistance or obstruction to his apprehension. (3) that such resistance or obstruction was illegal. (4) that the accused offered it intentionally.

When the offence charged is that of escape from custody prove. (1) that the accused had been charged with or convicted of an offence (2) that he was detained in custody. (3) that such detention in custody was in respect of such charge or conviction. (4) that such detention in custody was lawful. (5) that the accused escaped from such custody or attempted to do so. (6) that the accused did so intentionally.

The section punishes the persons who offer resistance or obstruction to their lawful apprehension, while Ss. 221–223 I. P. C., punish public servants who fail to apprehend or confine persons liable to be apprehended or confined.

Accused was left unguarded by the constable in whose custody he was. Escape punishable under S. 224 I. P. C., 18 M. 401. Foll. 31 M. 271.

Where a person, having been legally arrested, was subsequently left unguarded and he escaped, it was held that he was guilty under S. 224 I. P. C. 18 M. 401.

A person is not in lawful custody if the person apprehending him or causing his apprehension has no power to arrest 41 C. 17 ; 5 M. 22, 19 M. 310, 1 Weir 205.

Or if he is arrested on a warrant, not lawfully signed, P. R. No. 21 of 1885, 5 C. W. N. 447.

Or by a person who cannot legally arrest, e. g., a chowkidar. 41 C. 17.

Or, if he is kept in confinement for inflicting illegal punishment. 18 M. L. T. 310.

A person escaping from jail confined for failing to find security for good behaviour under S. 123 Cr. P. C., is punishable under S. 225 B and not under S. 224 I. P. C. 18 A. L. J. 1039, 58 I. C. 831, 8 C. 331, 7 A. 67., 7 M. H. C. App. 41 of 1874.

But when the arrest itself is illegal, the custody in which he is taken on the arrest, is not lawful within the meaning of S. 224 I. P. C. 6 M. L. J. 173, 19 M. 310 ; dis 21 M. 296. 21 C. 337 dis 28 C. 253. 29 A. 377.

It is not necessary that the custody in which a person arrested is taken, should be that of the arresting officer. The custody into which he may be lawfully given after arrest is lawful custody. 1 Weir 210, 11 M. 441 ; and 480 fol in 27 C. 839 (F. B.) com. 17 M. 103, 29 A. 515 ; 27 C. 839, (F. B.) contra 25 M. 61 not fol in 29 B. 449. See also 21 W. R. 22.

A Village Magistrate forwarded an accused in custody of the village servants to a Police station. The accused escaped on the way. The custody was held legal and escape punishable under S. 224 I. P. C. 11 M. 480.

A Village Magistrate handed over an accused to taliyaries for detention at night. The custody of taliyaries though they are not police officers is legal and escape is punishable under S. 224 I. P. C. 17 M. 103.

It was held that a Choukidar cannot be properly regarded as a Police officer within the terms of S. 59 Cr. P. C.,

and escape from his custody is not an offence under S. 224 I. P. C- 41 C. 17; 17 C. W. N. 978; 33 I. C. 644. 14 Cr. L. J. 494 Contra 10 C. W. N. 287; 26 C. 570.

No offence is committed if there be no resistance:— Where the accused having been sentenced to imprisonment by a Village Magistrate refused to submit to the sentence and went away, and the evidence did not show that any proper attempt was made to arrest him, it was held that the conviction under this section was bad. 1 Weir 204.

A process-server went to the village of the accused and told him that he had a warrant for him and took him before the Village Magistrate, who then read out the warrant to the accused. The process-server informed him that he should pay the amount. The accused's offer to pay a less sum than that mentioned in the warrant having been refused, he ran away. It was held that the accused was duly arrested and was in the custody of the process-server at the time he made his escape. 1 Weir. 206.

Escape or rescue of a person arrested by an Excise officer for falsely selling black stone as opium are offences under Ss. 224 and 225. 43 C. 1161, 20 C. W. N. 1294, 17 Cr. L. J. 379, 35 I. C. 811.

An arrest is not illegal because the warrant for arrest is not addressed by name to the baliff of the court. 15 Cr. L. J. 576, 1914 M. W. N. 498, 25 I. C. 328.

The endorsement in a warrant should be made in accordance with law. When an endorsement is made only by initials which are also proved or identified to be of the proper person the warrant does not become invalid. 5 C. W. N. 447.

Where a ryot escaped from the custody of the village servants who were directed to imprison him in stocks for using abusive language under S. 10 of Madras Regulation XI of 1816. Held, that the lower courts ought to have considered whether the accused was liable to punishment in stocks or not and on

that ground to find whether the custody is legal or not. 18 M. L. T. 310, 16 Cr. L. J. 672, 30 I. C. 656.

Resistance to a warrant addressed to the bailiff of the court but executed by the Naib Nazir and process-servers without any endorsement by the bailiff is not illegal. 22 Cr. L. J. 145, 59 I. C. 849.

Escape from lawful custody is punishable under S. 224 I. P. C. even if there is subsequently an acquittal. 1896 A. W. N. 151; 3 L. B. 211.

S. 225 I. P. C:—Resistance or obstruction to lawful apprehension of another person.

Evidence:—Prove (1) that the person in question was detained in custody. (2) that such detention was in respect of an offence (3) that such dotention was lawful. (4) that the accused rescued or attempted to rescue such person. (5) that he did so intentionally. Prove further that the case falls under a particular clause of the section.

S. 225 I. P. C., when the apprehension is not lawful the resistance to such apprehension will not be any offence.

An escape from arrest uuder S. 55 Cr. P. C., will not fall under the section, but under sec 225 B. 7 A. 67, see also 8 C. 331.

A private person arrested a thief and made him over to a Choukidar or to his servant to be taken to the nearest Police station. Any one who rescues the thief from them, commits an offence under S. 225 I. P. C. 11 M. 489, I Weir 200 Ref. 17 M. 103; 23 A 266 Foll. 29 A 575.

Rescue from warrant not addressed to particular bailiff by name but addressed to bailiff of court is offence. 1914 M. W. N. 498, 25 I. C. 328.

Causing obstruction to Police-Officer in arrest of person accused of cognizable offence is offence though such officer is not entrusted with the execution of warrant in such case. 40 M. 1028.

The person from whose custody the rescue is effected must have authority to lawfully detain the person rescued otherwise no offence is committed for effecting the rescue 35 C. 361.

On a warrant which provided for bail a constable arrested a person without giving him intimation that bail had been allowed. He was rescued by a number of persons who assaulted the constable. It was held that as the constable arrested him without asking him whether he could give bail he was not in lawful custody and his rescue therefore did not constitute any offence. 16 C. W. N. 549.

A person rescuing a prisoner arrested by a Police Officer as a member of an unlawful assembly; (13 W. R. 75.) and a person rescuing a thief from the custody of a private person who had arrested him in the act of stealing (11 M. 441.); or from the custody of a chowkidar to whom a private person had handed over the thief after arresting him (29 A. 575.) were held to have committed an offence under S. 225 I. P. C.

S. 225 A I. P. C:—Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for.

Evidence:—Prove (1) that the accused was a public servant (2) that he was legally bound to apprehend or to keep in confinement, the person in question. (3) that he omitted to apprehend that person, or suffered him to escape from confinement. (4) that he did as above intentionally or negligently for clause (*b*). (5) that the offence does not fall under S. 221, 222 or 223 or any other law.

S. 225 A, punishes intentional or negligent omission to apprehend on the part of a public servant not coming within the purview of Ss. 221. 222, or 223.

Villagers assisting a headman, in arresting a person and bringing him to a police station are not public servants within S. 21. 18 Cr. L. J. 351, 38 I. C. 735.

S. 225 B. I. P. C :—Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

Evidence :—Prove (1) that the accused offered some resistance or illegal obstruction. (2) that he did so (*a*) to prevent the lawful apprehension of himself or of any other person, or (*b*) to escape or attempt to escape from any custody in which he is lawfully detained, or (*c*) to rescue or attempt to rescue some person from some custody in which that person was lawfully detained. (3) that he did as in (1) intentionally.

In order to constitute an offence under the section, there must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. 38 A. 506, 14 A. L. J. 731, 35 I. C. 973, 17 Cr. L. J. 413.

Positive evidence must be adduced to prove the resistance offered to the person producing a warrant of arrest. There must be an overt act of resistance or obstruction. 20 Cr. L. J. 64, 48. I. C. 832.

"Escape" in S. 225 B, includes also escape which is effected with the consent of the custodian. 25. M. L. T. 290 1919. M. W. N. 695, 9. L. W. 216, 20. Cr. L. J. 298, 49. I. C. 656.

Escape from confinement for failure to furnish security to be of good behaviour is punishable under this section, 18 A. L. J. 1039.

Under S. 79 Cr. P. C., no person except a Police officer can execute a warrant of arrest under an endorsement from another Police officer. Therefore an arrest by process-serving peons under a warrant endorsed to them by a court Head Constable is not a lawful arrest, and rescue from their custody is not an offence under S. 225 B. 27 C 457.

An arrest without notifying the substance of the warrant to the person against whom the warrant is, as required

by S. 80 Cr. P. C., is not a lawful arrest and resistance to such an arrest is no offence under S. 225 B. 23 C. 896, 26 C. 748.

The Police instituted proceedings under S. 110. Cr. P. C., against the accused and produced him before a second class Magistrate who passed an order of remand for his production before a First Class Magistrate. On the day of hearing the accused while on his way to court escaped from custody. Held, that the escape of the accused was not an offence under S. 225. B, as the Second Class Magistrate had no power to order remand under S. 167. Cr. P. C.

39. M. 928, 18 Cr. L. J. 403, 38 I. C. 963

S. 226 I. P. C:—Unlawful return from transportation.

Evidence:—Prove (1) that the accused had been lawfully transported. (2) that the terms of transportation had not expired. (3) that the punishment of such transportation had not been remitted. (4) that the accused had returned from such transportation.

S. 226. I. P. C., punishes the criminal who is lawfully transported but who unlawfully returns from the place of transportation.

If a prisoner escapes from custody whilst on his way to undergo sentence of transportation, he commits an offence punishable under S. 224, and not under S. 226. I. P. C. 4. M. H. C. 152.

S. 227 I. P. C:—Violation of condition of remission of punishment.

Evidence:—Prove (1) the nature and extent of the original punishment to which the accused had been sentenced. (2) that such punishment had been remitted. (3) that such remission had been granted to and accepted by the accused upon a certain condition. (4) that the accused violated such condition. (5) that he did so, knowing that he was violating such condition. (6) prove also whether the accused has already suffered any part of the original punishment.

S. 227 I. P. C., deals with those cases in which remission of punishment is made conditional by Government under S. 401 Cr. P. C.

S. 228 I. P. C :—Intentional insult or interruption to public servant sitting in judicial proceeding.

Evidence :—Prove (1) that the person offended is a public servant. (2) that, at the time of the offence, such public servant was sitting in some stage of a judicial proceeding. (3) that whilst he was so sitting, the accused offered an insult to such public servant, or caused some interruption to him. (4) that he did so intentionally.

Under the section the Court is both prosecutor and Judge and so the powers should be used only in exceptional cases. Courts taking action under this section ought not to give room for the impression that they are unduly sensitive. 29. M. L. J. R. 274.

Insult or interruption to a public servant, offered under this section, should be while he is sitting in a stage of judicial proceeding. The Section does not provide against a contempt of court committed by the publication of a libel out of court., 10 C. 109.

The interruption must be intentional, pleader insisting while conducting a case upon his questions being taken down or objections noted is no offence. 2 L. W. 686.

Coarse expression used by litigant but not addressed to court is neither insult nor interruption even if actually overheard by the presiding officer. 15 I. C. 983.

The accused had a scuffle with some other person in the verandah of a court room and the court chaprasi intervened and stopped it. No interruption was caused to the court and there was no intention to insult the court. Held, that the accused was not guilty of an offence under S. 228. 20 Cr. L. J. 777, 53. I. C. 617.

When a person making a noise in court is charged under S. 228 the record must show the stage of judicial pro-

ceeding interrupted and the evidence must establish that such interruption was intentional as such vital irregularities are not cured by S. 537 Cr. P. C. 15 Cr. L. J. 621, 25. I. C. 629.

A witness refusing to answer questions by counsel or court is guilty of the offence under S. 228 I. P. C. 19 Cr. L J. 676, 46, I. C. 36.

An audible remark which interrupted the proceedings in a court of justice is not enough. The court must further be satisfied that the accused intentionally caused interruption. 29 M. L. J. 274, 2 L. W. 686, 16 Cr. L. J. 610, 30 I. C. 434.

Though a petition for adjournment on the ground that accused intended to apply for transfer of the proceedings to another court is not happily worded, no presumption that the intention of the petitioner was to offer insult to court can be drawn. 33 A. 284, 14 A. L. J. 247, 17 Cr. L. J. 163, 33 I. C. 643.

For the purpose of S 228 I. P. C., judicial proceedings are not concluded when sentence is passed, but continue until the prisoner is discharged or removed in custody. 1 Weir 214.

S. 229 I. P. C:—Personation of a juror or assessor.

Evidence:—Prove (1) that the accused was returned., &c. (2) that he was not entitled by law to be so returned or empanelled, &c. (3) that he caused or suffered himself intentionally or knowingly to be so returned, empanelled, &c., by personation, or otherwise. (4) that he at the time he was so returned or empanelled, &c., knew that he was not entitled to be so returned or empanelled, &c.

Or prove points (1) and (2) as above and further:—(3) that the accused knew that he had been returned or empanelled, &c., contrary to law. (4) that he nevertheless voluntarily served in that capacity.

S. 229 I. P. C., is intended to punish false personation of a juror or an assessor. There are five sections in the code

which deal with false personation, viz., Ss. 140, 170, 171, 205 22 &9. and Ss. 276, 278, 321, Cr. P. C., deal with jurors and assessors.

Offences relating to coin and Government stamps.

Ss. 230-263-A I. P. C.,

Ss. 230 to 254 deal with offences in relation to coin.

Ss. 255 to 263-A with offences in relation to stamps.

Offences relating to coin are of two classes (1) "counterfeiting" (S. 231 to 236) and (2) alteration (Ss. 246 to 254).

"Coin" defined.

Coin is metal used for the time being as money, and stamped and issued by the authortiy of some State or Sovereign Power in order to be so used. S. 230 I. P. C.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money, and any metal which has been so stamped and issued shall continue to be Queen's coin for the purposes of Chapter XII, notwithstanding that it may have ceased to be used as money.

The test whether a coin is money or not is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. 29 A. 141, 11 B. H. C. 172.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Metals are not coin, in as much as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

(*e*) The "Farukhabad" rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin although it is no longer so used. S. 230 (Illustrations).

Moorshidabad rupees stand on the same footing as Farukhabad rupees. 28 A. 62, 2 Cr. L. J. 395. 23 A. W. N. 115.

A coin of the time of the Emperor Akbar (11 B. H. C. 172), or a gold mohur of the reign of Shahjahan (29 A. 141.) cannot be deemed to be a coin in as much as it is not used for the time being as money. Gold mohurs which although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money." 5 N. W. P. 187.

S. 231 I. P. C :—Counterfeiting coin.

Evidence :—Prove (1) that the metal is a coin. (2) that the accused counterfeited it, or performed on it any part of the process of counterfeiting. (3) that he did so knowingly.

A counterfeit coin means coin not genuine, but resembling, or apparently intended to resemble or pass for, genuine coin and includes genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.–It is not essential to counterfeiting that the imitation should be exact.

Explanation 2.– When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised. S. 28 I. P. C.

It is not necessary under the section that the counterfeit coin should be made with the primary intention of its being passed as genuine; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such. 30-A 96. The thing charged to be counterfeit coin must have some such resemblance to a genuine piece of coin as to show

that it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete. 1 Weir 219.

A counterfeiting with some small variation in the description, effigies, or arms, done with the intention of evading the law, is yet within it. It is not necessary to have an impression of any sort on a counterfeit coin if it was meant to pass off as a worn out or defaced coin of a particular denomination.

It is also not necessary that the counterfeit coin should be counterfeit of a current coin. 1 Weir. 221.

Preparing blanks with such materials as when rubbed will make them resemble the real coin amounts to a complete offence.

A person fraudulently representing to an ignorant person a medal as being money was held to have committed no offence. 1 Weir. 219.

Bad imitation which is not capable of being used as money is not an offence under S. 231 I. P. C., and that implements used in their manufacture would not fall under the purveiw of S. 231 I. P. C. 2 W. N. 100.

S. 232 I. P. C:—Counterfeiting Queen's coin.

Evidence :—prove the same points as for S. 231, showing in (1) that the coin counterfeited is a King's coin.

The section enables the court to inflict enhanced sentence where the offence committed is the same as in the last section but the coin is King's coin.

Under Ss. 232 and 235 I. P. C., it is not necessary to prove that the accused intended that the spurious coins should go into circulation and be used as money. It is sufficient that there should be the intention to practise deception by means of the imitation. P. R. No. 4 of 1899.

Where false coins are made only for the purpose of passing them secretly into the house of the coiner's enemy in order to get him into trouble, the person making those coins and in possession of the instruments and materials used therefor are

neither guilty under this section nor S. 235 I. P. C., but is liable to be convicted only under S. 195 I. P. C. P. W. R. Cr. No. 17 of 1911. P. L. R. No. 43 of 1912. Where the accused had in his possession a double pice, which he quick-silvered so that it resembled a rupee, and he delivered it to a third person to get it changed for other coins as a rupee, it was held in P. R. No. 9 of 1884 that he would not be guilty of an offence under this section but this defence was held to be not good in the light, of Explanation 2 to S. 28 I. P. C., added by the Metal Token's Act. 30 A. 93. Where a person removed the ring from a coin which had been used to form part of a necklace or other ornament, and worked up the face of the coin where the ring had been, it not being shown that any material part of the coin had at any time been removed, it was held that he was not guilty under this section. 23 A. 430.

S. 233 I. P. C:—Making or selling instrument for counterfeiting coin.

Evidence:—Prove (1) that the accused made, or mended or performed some part of the process of making or mending the die or instrument; or that he bought, sold, or disposed of it. (2) that he did so, for the purpose that such die or instrument might be used for the purpose of counterfeiting coin; or that he knew, or had reason to believe, that the same was intended to be used for such purpose.

233 I. P. C:—Contemplates an offence for making or selling instrument for counterfeiting coin, and S. 234 I. P. C., describes the same offence but provides enhanced punishment as the coin affected is the King's coin.

In both the sections mere acts of preparation towards the offence of coining are made substantive offences, such as the making of dies or other instruments used in the manufacture of coin. It is not necessary that the instrument should be capable of making an entire impression of a coin.

S. 234 I. P. C:—Making or selling instrument for counterfeiting Queen's coin.

Evidence :—Prove the same points as for. S. 233, showing in (1) that the coin counterfeited is a King's coin.

S. 235 I. P. C :—Possession of instrument or material for the purpose of using the same for counterfeiting coin.

Evidence :—Prove (1) that the instrument or material in question is one for the purpose of counterfeiting coin (or King's coin). It must be shown by the prosecution that the instrument is capable of counterfeiting coin. (2) that accused was in possession of such instrument or material in question. (3) that he was in possession thereof, for the purpose of using it ; or that he knew or had reason to believe, that it was intended to be used for that purpose.

This section punishes the person who is in possession of instrument or material for the purpose of using the same for counterfeiting coins. Mere possession of instruments and coins is insufficient that is, there must be proof that the object in question was in such a position that the accused, had he known it, might have exercised control over it. There must also be evidence of some circumstance indicating that accused intended to exercise power or control over them or that he knew that he could do so at will 6 B. L. R. 887. To sustain a conviction under the section not only possession of the instruments for counterfeiting coin is necessary, but also possession within the knowledge of the accused. 16 Cr. L. J. 264, 28 I. C. 152. The possession of a wife, clerk or servant on account of a husband or master is deemed by law to be the possession of the latter. 30 L. J. M. C. 141. It is not essential for counterfeiting coins that they should exactly resemble genuine coins. It is sufficient that they are such as to cause deception and may be passed for genuine coins. 17 W. R. 364 Foll. It is also immaterial that they are not of silver but are of some other inferior metal. Where the articles found are large properties and placed in a conspicuous place to which the managing member may have access and which could not be overlooked by him, the presumption that the managing member was in possession, may fairly be made. 6 B. L. R. 887, Ref.

But where the articles are small ones, the presumption cannot be properly raised. Where counterfeit coins and moulds were found buried in a verandah which was open, with a village path to the South of it, and road to the West, it was held propable that they were placed there by some enemies of the accused and the accused knew nothing about them. 20 Cr. L. J. 439, 51 I. C. 268.

S. 236 I. P. C :—Abetting in India the counterfeiting out of India of coin.

Evidence :—Prove (1) that the accused abetted the counterfeiting of coin. (2) that the counterfeiting of coin was to be out of British India. (3) that the accused was in British India at the time of such abetment.

Any person in India, whether a subject or a foreigner, who supplies instruments or materials for the purpose of counterfeiting any coin or assists in any other way, is punishable under this section. Abetment in British India must be complete.

S. 237 I. P. C :—Import or export of counterfeit coin.

Evidence :—Prove (1) that the coins in question are counterfeit coins. (2) that the accused imported into, or exported from, British India, such coins. (3) that he, at the time he so imported or exported them, knew, or had reason to believe, that they were counterfeit.

S. 238 I. P. C :—Import or export of counterfeits of Queen's coins.

Evidence :—Prove the same points as for S. 237, showing in (1) that the counterfeit coins are King's coins.

S. 237 I. P. C., consists in an import or export, whether by sea or land, of any coin known by the importer, or which he has reason to believe, to be counterfeit. S. 238 I. P. C., describes the same offence, but provides enhanced punishment as the coin is King's coin.

S. 239 I, P. C :—Delivery of coin possessed with the knowledge that it is counterfeit.

Evidence :—Prove (1) that the coin in question is a counterfeit coin. (2) that the accused became possessed of it. (3) that when he became so possessed he knew that it was a counterfeit coin. (4) that he delivered it to some one, or attempted to induce some one to receive it. (5) that he, when he so delivered it, &c., intended to defraud, or intended that a fraud might be committed.

It must be counterfeit of a coin used for the time being as money; otherwise the offence will be that of cheating and not of uttering false coin. 29 A. 141. This section refers to a person who procures, or detains or receives counterfeit coins. 3 N. W. P. 150. Evidence of possession and the attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins. 8 B. 223.

S. 240 I. P. C :—Delivery of Queen's coin, possessed with knowledge that it is counterfeit.

Evidence :—Prove the same points as for S. 238, showing in (1) that the counterfeit coin is a counterfeit of the King's coin.

S. 241 I. P. C :—Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

Evidence :—Prove (1) that the coin in question is a counterfeit coin. (2) that the accused delivered it, or attempted to induce some one to receive it. (3) that he so delivered it, or so attempted, to induce some one to receive the same, as genuine. (4) that he, at the time he delivered it, &c., knew the same to be a counterfeit coin.

The gist of an offence under S. 241. I. P. C., is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit. 4. N. W. P. 62.

S. 242 I. P. C :—Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

Evidence :—Prove (1) that the coin in question is a counterfeit coin. (2) that the accused was in possession of it.

(3) that he was in possession thereof, with intent to defraud, or with intent that fraud might be committed.

Note:—The accused may tender evidence to show that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not.

(4) that at the time he became so possessed thereof he knew it to be counterfeit.

S. 243 I. P. C:—Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

Evidence:—Prove the same points as for S. 242, showing in (1) that the counterfeit coin is a counterfeit of the King's coin.

Three classes of offences are created by sections. 239 to 243 I. P. C:—

(1) Delivery to another of coin, possessed with the knowledge that it is counterfeit (Ss. 239, 240).

(2) Delivery to another of coin as genuine, which when first possessed, the deliverer did not know to be counterfeit. (S. 241).

(3) Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof. (S. 242, 243).

These sections are directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner. 3 N. W. P. 150. 10 P. R. 1892.

Evidence of the possession and the attempted disposal of coins of unusual kind is relevant on a charge of uttering such coin soon afterwards when the factum of uttering is denied. 8 B. 223.

Upon a charge of uttering counterfeit coin, in order to prove guilty knowledge evidence is admissible of the subsequent uttering by the prisoner of counterfeit coin of a different denomination. 24 M. L. J. 134.

The offence is committed even though the coin is refused by the person to whom it is offered. 20 M. L. J. 134.

An accused went into the shop of D, and asked to purchase some coffee and sugar, and in payment of the same he put down in D's shop a counterfeit coin, which D took up and said to the accused that it was a bad one. The accused left D's shop, leaving the coin; but without the coffee and sugar. It was held that the accused was guilty of uttering a false coin. 23 W. R. 4.

Mere possession known to be counterfeit coin is an offence under S. 242 and 243 I. P. C., even though no attempt is made to pass it off, provided it was kept for a fraudulent purpose, and was originally obtained with guilty knowledge. Possession must be with intent to defraud.

Possession in S. 243 I. P. C., should be read in the light of S. 27 I. P. C. 44 C. 477, 24 C. L J. 400, 21 C. W. N. 33, 18 Cr. L. J. 385, 38 I. C. 945.

When there is nothing to show that a person charged was in possession of counterfeit coins fraudulently or with intent that fraud may be committed, or that he knew when he became possessed of them that they were counterfeit, the requisites of S. 243 I. P. C., are not fulfilled. 3. P. L. R. 288.

A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew it to be counterfeit. The fact that, at the time of itsdelivery, A was possessed of a number of other pieces of counterfeit coin is relevent. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant S. 14. (illustration B) I. E. A.

A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A. may prove these facts. S. 21 (illustration E) of I. E. A.

S. 244 I. P. C :—Person employed in mint causing coin to be of different weight or composition from that fixed by law.

Evidence :—Prove (1) that the accused is employed in a lawfully established mint in British India. (2) that he, during such employment, did or omitted to do, something he was legally bound to do, which would cause any coin issued from that mint to be of a different weight or composition from that fixed by law. (3) that he did, or omitted to do, such thing with that intention.

The object of this section is to secure the purity of the coinage and its exact conformity to the legal standard against the act or omission of persons employed in mints.

It will not be necessary under the section to prove that any wrongful gain should accrue to the person charged, or that loss should be caused to the Government or the Public. M & M. 192. See also the Indian Coinage Act 111 of 1906.

S. 245 I. P. C :—Unlawfully taking coining instrument from mint.

Evidence :—Prove (1) that instrument in question is a coining tool or instrument. (2) that it belonged to a mint lawfully established in British India. (3) that the accused took it out of the mint without lawful authority.

The substance of this offence consists in taking a coining tool without lawful authority out of any mint for the purpose of using it for making counterfeit coin.

S. 246 I. P. C :—Fraudulently or dishonestly diminishing weight or altering composition of coin.

Evidence :—Prove (1) that the metal in question is a coin. (2) that the accused performed upon such coin the operation in question. (3) that such operation diminished its weight, or altered its composition. (4) that the accused did as above fraudulently or dishonestly.

S. 247 I. P. C :—Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

Evidence:—Prove the same points as for S. 246, showing in (1) that the coin in question is a King's coin,

S. 246 I. P. C, deals with fraudulent or dishonest diminution in the weight or composition of a coin and S. 247 I. P. C., describes the same offence but provides enhanced punishment as the coin affected is the King's coin.

S. 248 I. P. C :—Altering appearance of coin with intent that it shall pass as coin of different description.

Evidence:—Prove (1) that the metal in question is a coin. (2) that the accused performed on such coin the operation in question. that such operation altered the appearance thereof. (4) that the accused did as above with the intention that such coin should pass as coin of a different description.

The alteration under this section must not diminish the weight of the coin. If the weight is diminished either S. 246 or S. 247 I. P. C., will apply.

The offence is complete as soon as the coin is altered, though no fraudulent purpose can be proved. It is also not necessary to show that there is in fact a description of coin at all resembling or corresponding to the altered coin.

Quick-silvering of a half-pice so as to give it the appearance of a four-anna silver piece will be punishable under S. 248 I. P. C.

S. 249 I. P. C :—Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

Evidence:—Prove the same points as for S. 248, showing in (1) that the coin in question is a King's coin.

This section is merely an aggravated form of the offence described in S. 248 I. P. C.

S. 250 I. P. C :—Delivery of coin possessed with knowledge that it is altered.

Evidence:—Prove (1) that the coin in question was one with respect to which the offence defined in S. 246 or 248

was committed. (2) that the accused was in possession of it. (3) that at the time when he became possessed of it, he knew that any of the said offences had been committed. (4) that he delivered it to some one, or attempted to induce some one, to receive it. (5) that he did as above with intent to defraud or with intent that fraud might be committed.

This section and S. 251 I. P. C., are intended to punish persons who are traders in spurious or altered coins. They correspond to S. 239 and 240 I. P. C. There must be both possession with knowledge and fraudulent delivery.

S. 251. I. P. C:—Delivery of Queen's coin possessed with knowledge that it is altered.

Evidence.—Prove (1) that the coin in question was one with respect to which the offence defined in S. 247 or 249 was committed. Other points as in S. 250.

This is an aggravated form of the offence described in S. 250 I. P. C.

The section does not require a sentence of fine as well as imprisonment to be inflicted, the sentence of fine is optional. 1 Weir. 223.

S. 252 I. P. C:—Possession of coin by a person who knew it to be altered when he became possessed thereof.

Evidence:—Prove (1) that the accused was in possession of a coin. (2) that it was a coin in respect of which the offence defined in S. 246 or 248 had been committed. (3) that the accused knew of it when he became possessed of the coin. (4) that he was so possessed of the coin with intent to defraud, or with intent that fraud might be committed.

S. 253 I. P. C:—Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

Evidence:—Prove the same points as for S. 252, showing in (1) that the coin in question was King's coin.

This section is an aggravated form of the offence described in section 252 I. P. C.

S. 254 I. P. C:—Delivery of coin as genuine which, when first possessed, the deliverer did not know it to be altered.

Evidence:—Prove (1) that the coin in question is one with respect to which any such operation as that mentioned in Ss. 246, 247, 248, or 249 has been performed. (2) that the accused delivered it to some one; or that he attempted to induce some one to receive it. (3) that he so delivered it, or attempted to induce some one to receive it as a genuine coin, or as a coin of a different description (4) that at the time he did so, he knew that it had been operated upon.

S. 241 I. P. C., corresponds to this section. Where possession is acquired innocently but on subsequent knowledge that the coin is counterfeit, if a person passes it off or attempts to pass it off as a genuine coin he will be punished under this section.

Where a person tendered a false coin to another and asked for change which was refused on the ground that the coin was false and he thereafter tendered it to another. Held, it may be presumed that after the first refusal the accused knew the coin to be bad. 12 Cr. L. J. 79, 9 I. C. 449.

Offences relating to stamps.

Ss. 255 to 263 A.

A stamp does not cease to be a stamp because it is cancelled. A person selling a forged stamp although it bears a cancellation mark commits an offence of selling forged stamps.

It is not necessary that the instruments for counterfeiting Government stamp should be capable of making an entire impression of a stamp.

The mere affixing to a letter a postal stamp which has been previously used does not of itself prove fraud or an intent to cause loss to Government. 1 A. W. N. 56.

If a person uses a postage stamp twice he will be punished. 5 C. P. L. R. 43.

S. 255 I. P. C:—Counterfeiting Government stamps.

Evidence:—Prove (1) that the counterfeit was that of a stamp issued by Government for the purpose of revenue. (2) that the accused made such counterfeit; or that he knowingly performed any part of the process of counterfeiting.

S. 256 I. P. C:—Having possession of instrument or material for counterfeiting Government stamp.

Evidence:—Prove (1) that the instrument or material in question is one usable for counterfeiting stamps. (2) that the stamps so producible thereby are counterfeits of those issued by Government for the purposes of revenue. (3) that the accused had such instrument or material in his possession. (4) that the same was in possession of the accused for the purpose of its being used to counterfeit such Government stamp; or that the accused knew or had reason to believe that such instrument or material was intended to be so used.

257 I. P. C:—Making or selling instrument for counterfeiting Government stamp.

Evidence:—Prove (1) that the instrument or material in question is one usable for counterfeiting stamps. (2) that the stamps so producible thereby are counterfeits of those issued by Government for the purpose of revenue. (3) that the accused made, or performed, some part of the process of making such instrument; or that he bought, sold, or disposed of such instrument. (4) that he did as above in order that such instrument might be used for the purpose of counterfeiting such stamp; or that the accused knew or had reason to believe that the same was intended to be used for such purpose.

S. 258 I. P. C:—Sale of counterfeit Government stamp.

Evidence:—Prove (1) that the counterfeit was that of a stamp issued by Government for the purpose of revenue. (2) that the accused sold or offered to sell such counterfeit stamp. (3) that when selling or offering the same for sale he knew or had reason to believe that the same was counterfeit.

S. 259 I. P. C:—Having possession of counterfeit Government stamp.

Evidence:—Prove (1) that the counterfeit was that of a stamp issued by Government for the purpose of revenue. (2) that the accused had such counterfeit stamp in his possession. (3) that he then knew the same to be counterfeit. (4) that he was so possessed intending to use or dispose of the same as a genuine stamp; or that he was so possessed thereof in order that the same might be used as genuine stamp.

S. 260 I. P. C:—Using as genuine a Government stamp known to be counterfeit.

Evidence:—Prove (1) that the counterfeit was that of a stamp issued by Government for the purpose of revenue. (2) that the accused knew the same to be counterfeit. (3) that he used such counterfeit stamp with such knowledge. (4) that he used the same as a genuine stamp.

Under S. 260 I. P. C., the using of stamps as genuine must be with knowledge that they are counterfeit. Hence, where a person sold an one anna stamp as a one-rupee stamp, it was held that he had committed no offence under this section, but was guilty of cheating under S. 415 I. P. C. 2 W. R. 65.

S. 261 I. P. C:— Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

Evidence:—Prove (1) that the stamp was issued by Government for revenue purpose. (2) that such stamp had been used as such on the substance in question (3) that the accused removed or effaced from such stamp some of the writing for which it had been used. (4) that the accused removed the stamp from such writing or document. (5) that he did so in order that such stamp might be used for a different writing or document. (6) that he did so with intent to defraud or to cause loss to Government.

S. 262 I. P. C:—Using Government stamp known to have been before used.

Evidence :—Prove (1) that the stamp was issued by Government for the purpose of revenue. (2) that it had been already used for such purpose. (3) that the accused afterwards again used such stamp. (4) that when he used it again he knew that it had been used before. (5) that he again so used the stamp, with intent to defraud or to cause loss to Government.

S. 263 I. P. C:—Erasure of mark denoting that stamp has been used.

Evidence :—Prove (1) that the stamp was issued by Government for the purpose of revenue. (2) that it had been used for that purpose. (3) that it bore a mark or impression denoting that it had been so used. (4) that the accused removed or erased such mark or impression. (5) that when he so removed or erased such mark or impression, he did so with an intention to defraud or to cause loss to Government.

Or prove the points (1), (2), (3) and (4) as above and further–

(5) that the accused had possession of such stamp in such cancelled condition; or that such stamp, in such cancelled condition, was sold or disposed of by the accused. (6) that the accused at the time knew that such mark or impression had been so removed or erased. (7) that he had a fraudulent intention, or had the intention to cause loss to Government, when he had such possession, or made such sale or disposal.

Or prove the points (1), (2) and (3) as above and further—

(4) that the accused sold or disposed of such used stamp. (5) that he, when selling or disposing of the same, knew that it had been used. (6) that he had a fraudulent intention, or had the intention to cause loss to Government, when so selling or disposing of it.

S. 263-A. I. P. C.—Prohibition of fictitious stamps.

Evidence :—Prove (1) that the accused made, knowingly uttered, dealt in, or sold the fictitious stamp in question, or knowingly used it for any postal purpose; or

(2) that he had in his possession, without lawful excuse, such stamps, or (3) that he made or, without lawful excuse, had in his possession any die, plate, instrument, or materials for making such stamp.

Offences relating to weights and Measures.

Ss. 264—267 I. P. C.

The offences punishable by them are not defined with reference to any precise standard of weight or measure established by law, but the legislature has, however fixed the standard by Act XXXI of 1871 (Indian Weights and Measures of Capacity Act.)

S. 264 I. P. C :—Fraudulent use of false instrument for weighing.

Evidence :—Prove (1) that the instrument in question is one for weighing. (2) that it is a false one. (3) that the accused knew it to be false. (4) that he used it knowing to be so (5) that he did as above with intent to defraud.

S. 265 I. P. C:—Fraudulent use of false weight or measure.

Evidence :—Prove (1) that the weight or measure is a false one; or that it is different from what it was used as. (2) that the accused used such false or different weight or measure. (3) that he did as above with intent to defraud.

S. 266 I. P. C :—Being in possession of false weight or measure.

Evidence :—Prove (1) that the instrument, or the measure, or the weight in question is false. (2) that the accused was in possession of the same. (3) that he knew the same to be false. (4) that he intended that such false weight, &c., should be used to defraud some one.

S. 267 I. P. C :—Making or selling false weight or measure.

Evidence :— Prove (1) that the instrument, or the measure, or the weight in question, is false. (2) that the accused either made, sold, or disposed of the same. (3) that he then knew it to be false. (4) that he so made, sold, or disposed of it, in order that it might be used as true; or that he knew that it was likely to be used as true.

One tolah below weight in a seer only represents a fair wear and tear, and is no evidence of a fraudulent intention which is the essence of the offence. 3 A. W. N. 224 see also 18 W. R. 7.

Fraudulent intent is essential for an offence, and where both purchaser and seller are aware of the actual measure used there can be no question of fraudulent intent. 40 A. 84, 15 A. L. J. 897, 19 Cr. L. J. 145, 43 I. C. 433.

The mere possession of false weights or measures will not of itself raise any strong presumption of fraud but fraudulent intent will be shown greatly by the place where they are found. If possession cannot be satisfactorily explained and accounted for, it is a sufficient ground for presuming an intention to use it fraudulently.

Possession coupled with use will, as a rule, be sufficient evidence thereof. 18 W. R. Cr. 7.

On information received, the Sub-Inspector in charge of a Police station inspected certain bazaars and on his report the District Magistrate ordered prosecution of 68 persons on a charge of using short weights. All of them were tried together and the prosecution evidence was taken in one case alone. A joint reply on behalf of all the accused was then put in being a statement on solemn affirmation with reference to the list of weights found to be wrong. Treating this as a confession the accused were all convicted. Held, (1) that the joint statment was not a confession, (2) that the method of joint trial adopted by the Magistrate was prejudicial to the accused and irregular and (3) that opportunity should have been given to each of the accused to explain his case separately. 15 Cr. L. J. 11, 22 I. C. 155.

A conviction under S. 265 I. P. C., cannot be maintained where there is no complaint by a purchaser. 9 Cr. L. J. 4.

Selling by means of unstamped measure does not, in the absence of evidence of fraud or falsity of the measure, constitute an offence. 1 Weir 223.

Where no standard is prescribed, it is clear that no presumption of fraud can arise. 9 Cr. L. J. 415.

A person who represents himself as using measure of a particular standard is bound to see that the measure is correct according to that standard, and if the measure varies from the standard so as to give the seller a considerable advantage, the courts are justified in interfering with the fraud. 1 Weir 225.

See S. 153 Cr. P. C., Inspections of weights and measures by Police.

Offences affecting Public Health, Safety, Convenience, Decency, and Morals.

S. 268—294 A.

There are two kinds of Nuisances. (1) Public and (2) Private.

S. 268 I. P. C., defines "a public Nuisance," and the remaining sections, with the exception of Ss. 290 and 291 I. P. C. define and prescribe punishments for certain kinds of public nuisances, whilst S. 290 I. P. C., provides the punishment for public nuisances not otherwise punishable by the code, and S. 291 I. P. C., deals with the repetition or continuance of public nuisances.

The essence of the offence is that it affects the public generally, or a section of the public resident near the locality of the nuisance, or persons in the exercise of a public right. 9 W. R. Cr. 70.

A nuisance which merely affects an individual or a few individuals is a ground for a civil action for damages, but is not indictable. 12 W. R. 160, XXV. 11 C. 793.

S. 133 to 143 Cr. P. C., deal with powers of Magistrates for the removal of nuisances, and S. 144 Cr. P. C., with a Magistrate's powers of issuing orders absolute at once in urgent cases.

Public nuisance is an offence against the public, either by doing a thing which tends to the annoyance of the whole community in general, or by neglecting to do anything which the common good requires. It is an act affecting the public at large, or some considerable portion of them.

Public nuisance can only be the subject of an indictment, otherwise a party might be ruined by a million suits.

Private nuisance is an offence against some particular individual or individuals as distinguished from the public at large.

A common nuisance cannot be excused on the ground that it is of some advantage to the person guilty of. 34 A. 345, 9 A. L. J. 355, 13 Cr. L. J. 183, 13 I. C. 999.

S. 269 Negligent act likely to spread infection of disease dangerous to life.

Evidence :—Prove (1) that the disease in question is (*a*) infectuous, and (*b*) dangerous to life, (2) that accused did an act which was likely to spread infection thereof, (3) that such act was unlawful or negligent, (4) that accused knew, or had reason to believe, that such act of his was likely to spread the infection of such disease. See 43 M. 344.

For S. 269 I. P. C., it must be shown that the accused had knowledge that the disease was infectious. Where the disease is generally known to be infectious there will be no difficulty.

Where K, knowing he was suffering from cholera travelled by a train, without informing the railway officers of his condition, and M, knowing K's condition, purchased his ticket and travelled with him, it was held that K was properly convicted under S. 269 I. P. C., because he must have known that he was doing an act likely to spread infection, and he did so negligently, in not informing the railway authorities, and that M was guilty of abetment of K's offence. 7 M. 276.

The accused resided in a plague-stricken house and had been in contact with a plague patient. He was taken to

the plague shed in company with the patient who died there. The next day the accused left the shed against orders and travelled by rail to the neighbouring town and from thence to another. It was held that he was guilty of the offence as he had sufficient reason to believe that his act was dangerous and likely to spread infection of a disease dangerous to life. 12 M. L. T. 664.

Where the accused was directed by the Health Officer of Madras City to remove his small-pox-stricken child to an isolation Hospital but the accused removed him to a separate and isolated house, held, that the accused had not unlawfully or negligently done any act to spread any dangerous disease and he was not guilty. 38 M. L. J. 80, 26 M. L. T, 386, 10 L. W. 627, 20 Cr. L. J. 785, 53 I. C. 689. In general, it may be laid down that anything which seriously affects the health, safety, comfort, or convenience, of the community may be indicted as a public nuisance. it is not necessary that the annoyance should injuriously affect every member of the public within its range of operation; it is sufficient in the language of S. 268 that it affects people in general who dwell in the vicinity. I. Cr. L J. 513. The expression "people in general" means a body or a considerable number of persons. I. L. B. R. 213.

Drawing water for a canal from a filthy and polluted source, carrying on trades which caused offensive smells, or intolerable noises, working rice-husking machines at night in a residential quarter, keeping gun-powder, naphtha or similar inflammable substances in such large quantities as to be dangerous to life and property, trotting of rams trained to fight in a crowded market-place, fouling the water of a Nala by puting into it bundles of stalks of Thur plants and every act which obstructs the public in the use of a highway or navigable river, either by actually blocking up or narrowing the available passage will be a public nuisance. An encroachment however slight on a tidal navigable river would not constitute public nuisance in the absence of proof that the encroachment caused one of the results

specified in S. 268. Similarly enclosing village-site the property of Government was held not to amount to public nuisance in I. Weir 245, 9 Cr. L. J. 338, 20 M. 433. But where a man places a board over the drain in front of his house obstructing a considerable portion of the street and sites thereon, writing and delivering to a large crowd of persons vouchers for bets which they made with him for Government opium sales 4 Cr. L. J. 492, or causes such noxious smell as to be a substantial annoyance to those using the highway, although not to the neighbourhood in general, or places anything on the land next to the highway, which can be a source of danger to persons properly using it, is liable under Ss. 268 & 290. I. P. C. Lawful cremation 19 M. 464; Offending the sentiments of a class 7 M. 590, 12 B. 437, I Weir 240, 10 A. 44, is held to be no nuisance.

A, a prostitute suffering from syphilis, encourages and allows B to have sexual intercourse with her, after assuring him that she is healthy, thereby communicating the disease to B. A is not guilty under S. 269 I. P. C, but under S. 417 or 420 I. P. C. II B. 59. This decision is of doubtful correctness. See Mr. Mayne's remarks thereon; Criminal Law of India, 562 to 564.

To support a conviction under S. 269 I. P. C., it is not ufficient to prove that the act is illegal but it must be also proved that the accused knew or had reason to believe that his act was likely to spread infection. 1 Weir. 226.

S. 270 :—Malignant act likely to spread infection of disease dangerous to life.

Evidence :—Prove points (1), (2) and (4) as in section 269; and (3) that accused acted malignantly.

S. 270 I. P. C., is an aggravation of that which is punishable by S. 269 I. P. C. Malice aggravates the offence. The word 'Malignantly' denotes a deliberate intention on the part of the accused.

S. 271:—Disobedience to quarantine-rule.

Evidence :—Prove (1) the existence of the rule of quarantine. (2) that such rule was made and promulgated by

Government. (3) that accused knew of such rule. (4) that he disobeyed it.

The motive for disobeying any rule is quite immaterial under this section. The disobedience is punishable whether any injurious consequence flows from it or not.

S. 272 :—Adulteration of food or drink intended for sale.

Evidence :—Prove (1) that the article in question is food or drink. (2) that accused adulterated it. (3) that such adulteration rendered it noxious if taken as food or drink. (4) that accused, at the time of such adulteration, intended to sell such article as food or drink, or knew it to be likely that such article would be sold as food or drink.

" Noxious " means harmful to health or unwholesome which must be proved before conviction for adulteration of of ghee with vegetable oil. 12 C. W. N. 608, 7 Cr. L. J. 405.

The mixing of noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration is punishable under this section. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e. g., mixing water with milk. 1 L. B. R. 153. See also 1 Weir. 228.

Selling toddy in which germs have germinated (1 Weir 228) Soaking paddy in dirty water (1 Weir. 227), mixing bread with alum (3 M. & S. 11) have been held to be an offence under S. 272 I. P. C.

S. 273 :—Sale of noxious food or drink.

Evidence:—Prove (1) that the article is food or drink. (2) that the accused sold, or offered, or exposed for sale such article. (3) that at the time it was sold, &c., it had been rendered, or had become noxious, or was in a state unfit for food or drink. (4) that he at the time knew, or had reason to believe, that the article sold, &c., was noxious, or unfit for food or drink.

This section deals with the sale or attempted sale of adulterated noxious articles, and not only such food or drink.

Where a butcher had killed and hung up a sheep, and on inspection the flesh was found unfit for food, but it was not removed to the shop nor exposed or offered for sale, it was held that the offence was incomplete and a conviction could not be sustained. 1 Weir. 227. To sustain a conviction under S. 273 I. P. C, it is necessary to show that the accused sold or exposed for sale an article which was to his knowledge noxious as food or drink. 23 A. 337, 1 A. L. J. 64, 1904 W. N. 56. The sale of adulterated articles of food as pure is not an offence under this section though it may amount to cheating. 3 C. W N. 66.

S. 274 :—Adulteration of drugs.

Evidence :—Prove (1) that the article is drug or a medical preparation. (2) That was adulterated by accused. (3) That such adulteration tended to lessen its efficacy, or to change its operation, or to make it noxious. (4) That accused intended that such adulterated drug should be sold or used for a medical purpose as an unadulterated drug or knew that it was likely that it would be so sold or used for the same.

S. 275 :—Sale of adulterated drug.

Evidence :—Prove (1) that the drug has been adulterated. (2) that the adulteration was such as to lessen its efficacy, or change its operation, or render it noxious. (3) that accused sold, or offered, or exposed such drug for sale; or that he issued it from a medical dispensary; or that he caused it to be used for a medical purpose. (4) that he sold, or issued such drug as an unadulterated drug; or caused it to be used by a person who did not know of such adulteration. (5) that he knew that such drug was so adulterated when he sold, &c.

S. 274—275 I. P. C., To support a conviction under these sections it is sufficient to show that the efficacy of a drug is lessened, it need not necessarily become noxious to life.

Mixing water with a drug is penal under the sections, but where a drug loses its efficacy by its being kept, the sections do not apply.

S. 276 :—Sale of drug as a different drug or preparation.

Evidence :—Prove (1) That accused sold, or offered, or exposed for sale, or issued from dispensary for medicinal purpose, the drug or medical preparation. (2) That it was so sold &c., by accused, as a drug or medical preparation different from what it is. (3) That he knew of such difference at the time it was so sold, &c.

This section deals with drugs only and not with articles of food or drink.

The difference between this section and Ss. 274 and 275 I. P. C., is that no adulteration is contemplated or essential for a conviction under this section as in them.

S. 277 :—Fouling water of a public spring or reservoir.

Evidence :—Prove (1) that the spring or reservoir is public. (2) that accused caused the water thereof to become corrupt or foul. (3) that he did so voluntarily. (4) that such corrupting or fouling rendered the same less fit for use than it ordinarily was before the accused did as above.

To bring an offence under the section two questions should be considered (1) whether the water of the tank has been ordinarily used for drinking purposes and (2) whether the accused voluntarily corrupted or fouled the water so as to render it less fit for drinking. 1 Weir. 229.

A river is not a public spring within the meaning of the section. Rat. Un. Cr. 14, 2 C. 288.

The words " public spring " do not include a continuous stream of water running along the bed of a river. 4 M. 229, 1 Weir 230.

Cultivating paddy in the bed of a tank used by the public for drinking purposes, 1 Weir. 229, fishing with basket

nets in a tank causing a slight disturbance of the mud, 1 Weir 231. Spitting into a public well, 18 Cr. L. J. 650; 40 I. C. 198, is an offence under this section, but bathing in tank not set apart for bathing purposes, 1 Weir. 228, fouling the water of a river running in a continuous spring, 6 B. L. R. 52; 1 Cr. L. J. 6, taking of water by a woman or man of low caste from public cistern of water or well. 2 B. L. R. 1078; is not an offence.

S. 278:—Making atmosphere noxious to health.

Evidence:—Prove (1) That accused caused the atmosphere to be vitiated. (2) That he did so voluntarily. (3) That such vitiation was in its nature noxious to the health of persons in general. (4) That such persons dwell or carry on business in the neighbourhood of the place, or pass along the public way.

This section and S. 336 I. P. C., provide for the punishment of similar acts causing danger to human life. and personal safety. It is not essential under either of them that hurt be actually caused.

It is not necessary that the alleged nuisance should produce smells injurious to health; it is sufficient if they be offensive to the senses. 34 C. 73.

S. 279:—Rash driving or riding on a public way.

Evidence:—Prove (1) that accused was driving a vehicle or that he was riding. (2) that it was public way on which he was driving or riding. (3) that he was driving or riding in a rash or negligent manner. Negligence cannot be inferred from the mere fact of a person having been run over. (4) that the same was such as to endanger human life, or such as to be likely to cause hurt or injury.

It is not necessary to prove that any person was on the road, at the time and the court may take into consideration the probability of persons using it being placed in danger. 19 B. 715. Under the section it must be shown that there was rashness or negligence. Negligence cannot be inferred from the mere fact of a person having been run over. 1 Weir. 232.

The actual driver, and not the owner of a carriage is liable. 14 W. R. Cr. 32. A person driving a carriage is not bound to keep on the regular side of the road; but must satisfy that he was not rash or negligent. 23 B. L. R. 379. In Madras there is a special rule passed under the Motor Vehicles Act prohibiting a car to be driven on the wrong side of the road. 1912 M. W. N. 539.

Criminal negligence or criminal rashness is an important element in this section and in that of Ss. 280, 283—289, 304-A, 336—338 I. P. C. It must be proved and it cannot be inferred from the fact of a person having been run over. 1 Weir. 232.

Under Ss. 279, 280, 282 and 284—289 no injury to life or property is necessary, it is enough if the act is rash or negligent. If actual hurt is caused the case would come under S. 337 or 338; and if death is caused, under S. 302 or 304-A.

S. 280 :—Rash navigation of Vessel.

Evidence :—Prove (1) that it was vessel which was being navigated. (2) that accused was navigating the same. (3) that he was doing so, in a rash, or negligent manner. (4) that the same was such as to endanger human life, or such as to be likely to cause hurt or injury.

This section deals with the case of inland navigation. Safety of passengers on the high seas is guarded by the Indian Merchant Shipping Act and the Pilgrim Ships Act and under this code.

Running of a launch into a cargo boat at anchor is prima facie evidence of negligence since the duty of steam vessels is to keep out vessels at anchor. 12 Cr. L. J. 582, 12 I. C. 846.

To support a conviction under this section there must be proof of rashness or negligence as the immediate cause, which endangers human life or is likely to cause hurt or injury to any other person. In awarding a sentence, the question of contributory negligence, if any, should be taken into consider-

ation, in mitigation of the punishment. 15 C. W. N. 835, 14 C. L. J. 656, 12 Cr. L. J. 362, 11 I. C. 130.

S. 281 :—Exhibition of false light, mark or buoy.

Evidence :— Prove (1) that accused exhibited the light, mark, buoy in question. (2) that such light, mark, or buoy was false. (3) that accused did as in (1), intending, or knowing that such false exhibition would be likely to mislead any navigator.

The act of exhibition of false light, mark, or buoy must be intentional, if due to negligence then this section will not apply.

S. 282:—Conveying person by water for hire in unsafe or over loaded vessel.

Evidence :—Prove (1) that accused conveyed a person for hire, or caused the same to be done. (2) that the mode of conveying that person was, in a vessel, by water. (3) that such vessel at the time was in such a state, or so loaded, as to be dangerous to the life of that person. (4) that when such person was thus conveyed accused acted negligently or with a knowledge of the state of such vessel.

Under this section no liability will attach to the owner if the ship sinks with her crew and a captain only ; but it will afford no protection if a single passenger goes to the bottom, though he may have been carried gratuitously.

Where a person with the assistance of two others plied a ferry boat. which was out of order, and had a crack, and he took in one hundred passengers, and as a consequence the boat was upset, and seven persons drowned, it was held that he should be convicted under the section. 1 B. H. C. 137.

Certain persons whom the accused, a ferryman, was rowing across a river, were drowned by the sinking of the boat which was an old one, with some holes in the bottom, over which planks had been nailed. It was held that the accused was guilty under this section, 11 W. R, 3.

S. 283 :—Danger or obstruction in a public way or line of Navigation.

Evidence :—Prove (1) that accused caused the danger, obstruction or injury in question. (2) that the same was caused by his act, or omission, to take order with property in his possession or under his charge. (3) that the person put in danger, obstruction, or injured, was then in a public way or public line of navigation.

Every unauthorised obstruction of a high way to the annoyance of the King's subjects is an indictable offence. The public is entitled to the use of the full width of the public street, however wide it may be, and whoever appropriates any part of the street by building over it infringes the right of the public. 20 M. 433. Obstruction to the public does not bring an act under S. 283 I. P. C. There must be some obstruction to some particular person or class of persons in a public way, &. 4 M. 235, 20 M. 433 14 C. 656, 25 C. 275. Contra 38 M. 305.

Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot-passengers from passing without inconvenience, it was a necessary inference that persons were obstructed and that it was not necessary to expressly prove that any specific individual was actually obstructed. 38 M. 305. Exhibition of clock-work toys in shop window is an offence under the section. 35 B. 368, 13 B. L. R. 209.

Where the accused allowed a prickly-pear fence, which formed a boundary between accused's yard and the road, to extend itself over a part of the road, and an obstruction of the road was thereby caused, it was held that his act was punishable, as prickly-pear is a plant which naturally extends itself very rapidly; it is the duty of those who use it as a hedge by the side of a public road to take care that the road is not obstructed by its growth. (1888) Weir (3rd edn.) 140. Where a prabha left lying in a public road could not fail to cause obstruction to a person who had occasion to pass

along the road, held, that though obstruction to any individual was not expressly proved, it was a matter of necessary inference. 38 M. 305, 16 Cr. L. J. 560, 29 I. C. 832.

In a case under S. 283 I. P. C., the prosecution must prove that the obstruction was caused under the authority or direction of the accused. 19 A. L. J. 125, 22 Cr. L. J. 331, 61 I. C. 59.

S. 284 :—Negligent conduct with respect to poisonous substance.

Evidence :—Prove (1) that the substance in question is poisonous, and, if taken would be dangerous to life, or likely to cause hurt or injury. (2) that accused did not act therewith, which endangered, or was likely to endanger human life, or was likely to cause hurt or injury. (3) that he did such act rashly or negligently. Or prove (1) as above and further.— (2) that accused was in possession of such substance. (3) that he, omitted to take such order therewith, as was sufficient to guard against a probable danger to human life therefrom. (4) that such omission was negligent, or with a knowledge of such probable danger.

The gist of the offence is culpable negligence. The fact that a person has the custody of any dangerous substance, suffices itself to impose upon him the duty of being careful; and he is criminally responsible if he negligently omits to take such order with the substance as is sufficient to guard against any probable danger from such substance to human life. It is not necessary under the section that the negligent omission under it should be followed by any disastrous consequences. 16 P. R. 1882.

S. 285 :—Negligent conduct with respect to fire or combustible matter.

Evidence :—Prove (1) that accused did an act that endangered or was likely to endanger life, or was likely to cause hurt or injury. (2) that such act was done, with fire or some combustible matter, (3) that such act was done rashly or

negligently. Or prove (1) that accused had in his possession, some fire or combustible matter. (2) that he omitted to take such order therewith, as was sufficient to guard against a probable danger to human life therefrom. (3) that such omission was negligent or with knowledge of such probable danger.

This section is not applicable where the act of the accused is wilful and not rash or negligent, in which case S. 436 may apply. 1877 Un. Cr. C. 126.

Where a person during his anger, broke the crockery, and then went out and set fire to the eaves of his house, thereby causing risk of injury to house-owners in the neighbourhood but doing no actual mischief. It was held that this section was not applicable as the prisoner's act was wilful and not rash or negligent.

The word 'injury' includes any harm illegally caused to the property of any person, and is not confined to injury to the person only. While a marriage procession was going on, the accused, who was one of the procession, used fire-works on the road, which burnt two bundles of straw with which a mandap belonging to the complainant was thatched, thereby causing him an injury. It was held that the accused was guilty under this section. 5 B. H. C. Cr. 67. Rat. Un. Cr. C. 134.

S. 286 :—Negligent conduct with respect to explosive substance.

Evidence :—Prove the same points as required for S. 285, showing that the act of the accused was done with "any explosive substance".

S. 285 I. P. C., deals with 'fire or combustible matter, this section deals with 'explosive substance,' otherwise the provisions of both the sections are alike.

The first part of the section is not confined to cases where the explosive is in the possession of the accused at the time of injury, but also applies to a case where the injury takes place after it left his possession and when it is being conveyed to its destination. 1 Weir. 236. Placing loaded gun

outside a house is no offence. 8 M. 421. Causing of hurt by negligence in the use of gun falls within S. 337 and not under this section. 28 A. 464, 3 Cr. L. J. 363.

S. 287 :—Negligent conduct with respect to machinery.

Evidence :—Prove the same points as required for S. 285 but showing that the act of the accused was done with "any machinery".

An owner of machinery is criminally liable if he compels his servants to work it in an unsafe condition knowing it to be so, in a manner likely to endanger human life; and under such circumstances the fact that he has employed a competent man to look after the machinery is not sufficient answer to the charge. If he employs a competent man to work it and leaves him unfettered, he cannot be held criminally responsible for any accident due to the errors of his employee. 1906 P. R. No 8. To say that because accidents have happened through its use therefore the machinery must be dangerous, is wrong. To say that because no accidents would happen if it were worked with absolute care therefore it cannot be dangerous, is also wrong. This is entirely a question of degree.

S. 288 :—Negligent conduct with respect to pulling down or repairing buildings.

Evidence :—Prove (1) that accused was pulling down or repairing building. (2) that he omitted to take sufficient order therewith to guard against a probable danger of the fall thereof, or any part thereof. (3) that such fall would probably endanger human life. (4) that such omission was negligent, or with a knowledge of such probable danger.

This section deals with negligent conduct with respect to pulling down or repairing buildings. If a building is situated on a public way and is in a dangerous condition and likely to injure persons using the way, then S. 283 I. P. C., will apply and not this section. The degree of care required by this section will be in proportion to the actual necessity of the case. If the building is in a populous place more care will be necessary than when it is in a place less frequented by people,

S. 289 :—Negligent conduct with respect to animal.

Evidence:—Prove (1) that the animal was in possession of accused. (2) that he omitted to take sufficient order therewith to guard against probable danger to human life or grievous hurt therefrom. (3) that such omission was negligent, or with knowledge of such probable danger.

This section does not refer to savage animals alone, but to any animal, e. g., a pony. 19 W. R. 1.

In the case of animals which are tame and wild in their general temper no mischievous disposition is presumed. It must be shown that the accused knew that the animal was accustomed to do mischief. If the animal is not naturally fierce or vicious, the onus of proving negligence lies on the prosecution. 2 W. R. 51, 1 Weir. 238. The animal must be in the actual possession of the person against whom a charge is brought no matter who the owner is. If animals dangerous by nature are let at large, the presumption is in favour of injury to human beings, but domestic animals like a dog are not presumed to be dangerous; hence in order to convict the owner of a dog under this section he must be proved to have known that the dog had a tendency to bite human beings. 19 Cr. L. J. 1, 42 I. C. 913. Allowing a vicious animal to be at large, knowing, raises presumption that the person letting it lose, knows that there is probable danger to human life. 18 B. L. R. 682, 17 Cr. L. J. 383, 35 I. C. 815. In the case of dogs, it must be proved against its owner that the particular dog had a habit of biting human beings. 42 I. C. 913, 19 Cr. L. J. 1.

S. 290 :—Punishment for public nuisance in case not otherwise provided for.

Evidence:—Prove (1) that the act or omission in question was an injury, danger, or annoyance, common to the public. (2) that such injury, danger, or annoyance was to the people in general who dwelt or occupied property in the vicinity it took place. (3) that such injury, &c, was caused by the act or illegal omission of accused. Or prove (1) that the act or

omission in question will necessarily cause injury, obstruction, danger, or annoyance to persons having occasion to use a public right, (2) that such injury, &c., was caused by the act or illegal omission of accused.

This section provides for the punishment of any nuisance falling within the four corners of the definition given under S. 268 I. P. C., but not punishable under any other section. The fact that there was a special law to meet a particular offence does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under it was established. 9 W. R. 70.

A prosecution cannot be instituted against the Chairman of a Municipality under this section for keeping a rubbish depot in the neighbourhood of houses but should be against the Municipal Corporation. 1 Weir. 243.

Conviction of the accused under S. 290 I. P. C., for acts of some persons who diverted the water of a stream into his land, with the result that a path was obstructed, is wrong and should be set aside. 10 Cr. L. J. 10, 2 I. C. 424.

S. 291:—Continuance of nuisance after injunction to discontinue.

Evidence:—Prove (1) the issue of the injunction (2) that such injunction was legally issued, (3) that the injunction is one which restrains the repetition or continuance of a public nuisance, (4) that accused was enjoined by such injunction from repeating or continuing such nuisance (5) that he has repeated or continued the same public nuisance.

To bring home a charge under the section it must be proved that the accused had on some previous occasion committed the particular nuisance, and had been personally enjoined not to repeat or continue it, and had repeated or continued it. 8. A. 99.

Before a conviction can be had of committing a public nuisance under the section, there must be proof that there was a previous conviction of an offence and an injunction by public

servant to desist from continuing such nuisance. 20 W. R. Cr. 55. The injunction to desist must be to the accused individually. 8 A. 99.

A District Magistrate or Sub-Divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or to continue a public nuisance. 143 Cr. P. C.

S. 292 :—Sale &c., of obscene books, &c.

Evidence :—Prove (1) that the book, &c., is of an obscene nature (2) that accused sold the same, or attempted or offered to do so; or that he distributed, imported or printed the same., for sale or hire, or attempted or offered to do so: or that he wilfully exhibited to public view the same, or attempted or offered to do so.

For the definition of word "Obscene" see 28 A. 100, 20 B. 193, 5 L. W. 237, 39 C. 377.

A book may be obscene although it contains a single obscene passage. 3 A. 837.

A religious or classical work does not become obscene, simply on account of its containing some objectionable passages, because the tendency of such publications is not to deprave or corrupt morals. If the tendency is otherwise it is an offence 39 C. 377, 13 Cr. L. J. 177, 13 I. C. 993. Works of art are never considered obscene.

The intention of the seller and distributor of obscene literature must be gatherd from the character of the matter contained in such books. 3 A. 837.

If a publication is in fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. 28 A. 100.

The test of obscenity within the section, is whether the tendency of the matter charged is to deprave and corrupt those minds that are open to such immoral influences. The question is always one of fact. 22 Cr. L. J. 513, 23 B. L. R. 166, 61 I. C. 401.

S. 293 :—Having in possession obscene book, &c., for sale or exhibition.

Evidence :—Prove (1) that the book, &c., is of an obscene nature, (2) that accused had possession of the same (3) that such possession was for the purpose of sale, distribution, or public exhibition.

This section follows as a corollary to S. 292 I. P. C. The possession must be for sale, distribution, or public exhibition. Mere possession will not render a person liable under this section.

S. 294 :—Obscene acts and songs.

Evidence :—Prove (1) that the song, ballad, or words, are of an obscene nature (2) that accused sang, recited, or uttered the same, (3) that he did so in or near a public place, (4) that the same caused annoyance to others.

Unless annoyance is caused the act will not be punishable. There must be definite evidence that annoyance was caused to a particular person or persons in general.

Indecent exposure of one's person or sexual intercourse in a public place is punishable under the section.

Acts such as indecent exposure of one's person in an omnibus. (22 M. L. J. 122); in a public urinal, and in a place where the public go will fall under this section.

A conviction under S. 294 I. P. C., for uttering obscene abuse in a public place may amount to a conviction for an offence involving a breach of the peace within the meaning of S. 106 Cr. P. C. 1904 U. B. R. (P. C.) 4.

Where the obscene words used by the accused were not set out in the evidence, it was held that the omission was not a sufficient ground for setting aside a conviction. 1 Weir. 251.

S. 294 A :—Keeping lottery office.

Evidence :—Prove (1) that the office or place in question was used for the purpose of drawing a lottery, (2) that

such lottery was not authorised by Government (3) that accused kept such office or place, and for the above purpose.

For the second clause of the section prove—(1) that accused published the proposal in question (2) that the nature of such proposal was to pay, &c., on an event or contingecy as described in the section.

A lottery is a distribution of prizes by lot or chance. 52 L. J. (M. C.) 101. 1 M. H. C. 448. An agreement for contribution to be paid by lot is not a lottery. 22 M. 212, 1 weir 251; Transaction requiring skill for winning prizes is not a lottery. 47 W. R. 161. The giving of prizes out of profits of sale only to the persons possessing the lucky tickets, wthout every person who has gone in getting something in return for this money, is lottery. 17 Cr. L. J. 143, 33 I. C. 319. The mere act of taking income-tax from a club on the profits of lo teries does not constitute authorisation by Government under S. 294A. I. P. C.

The words "any such lottery" in the section mean any lottery authorised by Government. 10 B. 97.

Proprietor of news paper publishing advertisement about foreign lottery and persons sending proposal thereto are liable. 10 B. 97.

The members of the committee of a club who exercise full control over club matters inclusive of premises, 'keep' the premises of the club within S. 294A I. P. C.

Where a house is kept open for a double purpose, viz., as an honest social club and also for gaming purposes, it is a house kept open for purpose of gaming, it being not necessary to show that it is used exclusively for gaming. 15 Cr. L. J. 243 23 I. C. 195.

An offence under S. 294 A. I. P. C., is made out when it is shown that the accused kept an office where he carried on the necessary preliminary work for running a lottery and received the lottery moneys and which he held out to the public

as the place where the lottery would finally be drawn. 23 Cr. L. J. 688, 69 I. C. 272

Ss. 295 :—298 I. P. C., Offences relating to religion.

S. 295—Injuring or defiling place of worship, with intent to insult the religion of any class.

Evidence :—Prove (1) that the place was one of worship, or that the object was a sacred one, (2) that accused destroyed, damaged, or defiled the same, (3) that he did so (a) with the intention of thereby insulting the religion of a class of persons ; or (b) with the knowledge that a class of persons is likely to consider such destruction, &c., as an insult to their religion.

Intention is the gist of the offence under it. Mere defilement of a place of worship is not enough.

The word 'defiles' is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure. 1 Weir. 253, 256, 4 M. 980.

A Moothan, of the Sudra caste in Malabar, can enter the Nallambalam or outer precincts of a temple, without polluting the temple within S. 295 I. P. C.. The word 'defile' in the section cannot be confined to the idea of making dirty but must also be extended to ceremonial pollution. 41 M. 980, 24 M. L. T. 181, 19 Cr. L. J. 960, 47 I. C. 812.

S. 295 I. P. C., refers to objects of respect and even veneration and objects which are held sacred. S. 297 I. P. C., deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead.

Where a Hindu had sexual intercourse with a woman secretly and at night within an enclosure surrounding the tomb of Mahomedan residents of the village, or that he did so even with the knowledge of any class of persons was held, to be an insult. 10 M. 126

Where the accused a goldsmith by caste performed certain ceremony by pouring cocoanut water over the idol of God Shiva, it was held that if the temple in which the ceremony was performed was one of a class in which the worshipers were not allowed to touch the idol or pour cocoanut water on it, except through persons specially appointed for the purpose, and bound to observe certain special rules, and if the accused performed the ceremony with the object of ridiculing openly the established rule, a conviction under the section might be supported. 1 weir 253, see also 10 M. 126.

The word object does not include animate objects but refers only to inanimate objects. 10 A. 150, 17 C. 852. Dissented 14 A. 145. Contra P. R. No. 27 of 1884 and P. R. No. 31 of 1888.

Killing of a cow by a Mussalman, within sight of a public road frequented by Hindus, was held to be not punishable under this section. 10 A. 150

Where a bull dedicated and set at large at the Shradh of a Hindu in accordance with religious usage was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans, it was held that no offence was committed. 17 C. 852. The killing of cow even if done with the intention of offending the religious susceptibilities of others is no offence under S. 295 I. P. C. 10 P. R. 1918 Cr., 1 P. W. R. 1918 Cr., 160 P. L. R. 1917, 19 Cr. L. J. 314, 44 I. C. 330.

The killing of a dedicated bull for the sake of the meat is not an offence under the section. 21 Cr. L. J. 453, 56 I. C. 437.

S. 296 :—Disturbing religious assembly.

Evidence :—Prove (1) the existence of the assembly in question (2) that such assembly was, at the time of the offence, engaged in performing religious worship or ceremony, (3) that being engaged in such performance was lawful, (4) that accused caused disturbance to such assembly when so engaged, (5) that he did as above voluntarily.

In this section proof of intention is unnecessary.

A religious service need not be stopped or actually prevented from being carried on; nor a religious assembly should be really disturbed. 1 Weir. 259. The word 'disturb' means molest or vex. 26 M. 554.

Where one party could hear little or nothing of what the others recited, it was held that no disturbance " was caused within the meaning of this section. 26 M. 554, 13 M. L. J. 171 Foll. 29 M. L. J. 91, 29 I. C. 248; 16 Cr. L. J. 767, 31 I. C. 337.

The assembly must have been lawfully engaged in the performance of such worship or ceremonies *i. e.*, they must be doing what they have a right to do. 23 C. 60, 7 A. 451, 474. The worship must be real worship and not a cloak for doing something else. 23 C. 60. A religious assembly held in a public street, or thoroughfare, so as to cause obstruction, cannot be said to be "lawfully engaged" within the meaning of the section. 26 M 554. Dis. 32 M. 527; 63 I. C. 984; but Appr. 34 A. 78.

Disturbance caused by music:—See Preventive Chapter.

Disturbance does not include spreading a false rumour causing religious procession to come to an end. 17 A. L. J. 820, 20 Cr. L. J. 421, 51 I. C. 197. Nor merely telling complainant and his relations who were preparing to cremate the body of their deceased relative not to cremate it. 2 P. R. 1919 Cr.

The carrying of flags through public streets in a procession of certain Lodhas to a temple with the sanction of public authorities is the performance of religious ceremony and the persons carrying them constituted an assembly lawfully engaged in religious ceremony. An attack on such a procession is an offence under S. 296 I. P. C. 34 A. 78, 8 A. L. J. 1150, 12 Cr. L. J. 573, 12 I. C. 837.

S. 297:—Trespassing on burial-places, &c.

Evidence:—Prove (1) that the place in question was a (a) place of worship; or (b) place of burials, &c. (2) that accused committed trespass therein, (3) that he did so (a) intending thereby to wound the feelings of some person, or to

insult the religion of some person; or (b) with the knowledge that the feelings of some person would be likely to be wounded thereby, or that the religion of some person would be likely to be insulted thereby. Or prove the following points— (1) the existence of the human corpse, (2) that accused offered an indignity thereto, (3) that he when offering such indignity, intended or knew, &c., as in (3) above. Or prove the following points— (1) that persons were assembled performing funeral ceremonies, (2) that accused caused disturbance to such persons when assembled, (3) that he did so intending thereby, or knowing, &c., as in (3) above.

This section deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead. 10 M. 126. The same principle as laid down in S. 295 I. P. C., applies to this section.

The trespass must be in a place of religious worship with the knowledge that the feelings of persons would be wounded thereby.

Where a joint owner of property entered a grave for the purpose of demarcating his share and in doing so dug up certain graves and exposed the bones of the persons buried in spite of the remonstrances of the relations of the buried persons, it was held that he had committed an offence under this section. 33 A. 773, 8 A. L. J. 927, 12 Cr. L. J. 532, 12 I. C. 300.

Obstruction of performance of obsequies comes under the section. 6 M. 254, 257. But a Moharram procession is not a funeral ceremony within the meaning of this section. 5 A. W. N. 49.

Persons who entered upon a burial place and ploughed up the graves were held to have committed an offence under this section, notwithstanding that their entry on the land was by the consent of the owner thereof. 18 A. 395, 34 M. 927; 33 A. 773; 12 Cr. L. J. 532.

It is not necessary for the purpose of S. 297 that a burial ground should be in use. Trespass in that section means any violent or injurious act and is not restricted to the same meaning attached to 'criminal trespass' in S. 441. 40 C. 548, 14 Cr. L. J. 117, 17 C. W. N. 534, 18 I. C. 677.

S. 298:—Uttering words, &c., with deliberate intent to wound religious feelings.

Evidence:—Prove (1) that accused uttered the words, or made the gesture, &c., (2) that he did so, intending to wound the religious feelings of any person, (3) that such intention was deliberate.

To hold a person liable under this section, the intention with which the words were uttered must be strictly proved, and it is not sufficient to show that the person who uttered the words knew that his act was likely to wound the religious feelings of any body. 2 M. L. J. R. 236.

The intention to wound must be deliberate, that is, not sudden but premeditated. Deliberate intention of the accused may be inferred from his words as well as from his acts. 4 P. R. 1820.

Exhibiting cow's flesh by carrying it in an uncovered state round a village with the deliberate intention of wounding the religious feelings of the Hindus is held to be an offence under this section. 13 A. W. N. 144.

Ss. 299 to 309 I. P. C.

S. 299 I. P. C:—Culpable Homicide. Offences affecting life.

Evidence:—Prove (1) the death of the person in question. (2) that such death was caused by the act of the accused. (3) that accused intended such act to cause death; or that he intended such act to cause such bodily injury as was likely to cause death; or that he knew that such act of his would be likely to cause death.

Homicide:—is the killing of a human being by a human being. It is either (A) Lawful, or (B) Unlawful.

(A) Lawful homicide :—

(1) Where the death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means and with proper care and caution. 80 I. P. C.

(2) Where the death is caused by a child, or a person of unsound mind, or an intoxicated person, as will come under S. 82, 83, 84 and 85.

(3) Where the death is caused unintentionally by an act done in good faith for the benefit of the person killed, when

(1) he or, if a minor or lunatic, his guardian has expressly or impliedly consented to such an act., (S. 87, 88), or

(2) Where it is impossible for the person killed to signify his consent, or where he is incapable of giving consent and has no guardian from whom it is possible to obtain consent in time for the thing to be done with benefit. (S. 92).

(4) Where the death is caused

(*a*) By a person, who is bound, or by a mistake of fact, in good faith, believes himself bound, by law (S. 76).

(*b*) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law. (S. 77).

(*c*) By a person acting in pursuance to the judgment or order of a Court of Justice. (S. 78.)

(*d*) By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law. (S. 79).

(*e*) By a person acting without any criminal intention to cause harm, and in good faith, for the purpose of preventing or avoiding, other harm to person or property. (S. 81).

(*f*) Where the death is caused in exercising the right of private defence of person or property (Ss. 100, 103).

(B) Unlawful homicide:— is the causing of death by doing

(1) an act with the intention of causing death;

(2) an act with the intention of causing such bodily injury as is likely to cause death; or

(3) an act with the knowledge that the act was likely to cause death.

The existence of an evil motive is not at all necssary. Malice is not made a necessary ingredient of the definition. Whatever may be the motive which incites the action and whether or not motive whatsoever be discoverable, if the act falls within any of the above elements, and none of the general exceptions (Ch. IV) are applicable, it is culpable homicide.

It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill. (see ill. (a) and S. 301).

A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death'. But one of the elements of the offence of culpable homicide must be present. 2 A. 522. S. 299 expl. 1.

Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet if in fact death is the result, the wound 'causes' death. All that it is essential to establish is, that the death has been caused by the bodily injury, and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one. see expl. 2 of S. 299 I. P. C.

Causing the death of a child in the mother's womb is not homicide; such an offence is punishable under S. 315 I. P. C.

Under the English Law the child must be completely emerged to constitute a human being. But under S. 299

I. P. C., Expl. 3, it must be proved not only that the child breathed and was therefore a living child (for that might have been done while it was entirely in the mother's womb) but that it breathed after it had wholly or partially emerged from its mother's womb. 17 Cr. L. J. 20, 32 I. C. 148.

S. 300 I. P. C.:—MURDER.

Evidence:—Prove (1) that the death of a human being has actually taken place. That the murder has been committed by some one, is essentially necessary to be proved. (2) that such death has been caused by, or in consequence of, the act of accused. Where there is no evidence to prove that the accused had anything to do with the death of the deceased, no conviction could stand. (3) that such act was done with the intention of causing death. Or that it was done with the intention of causing such bodily injury as (a) accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death;. Or that accused caused such death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

Subject to certain exceptions, culpable homicide is murder, if the act by which the death caused is done :

(1) with the intention of causing death;

(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused,

(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

(4) With the intention of causing such bodily injury so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

Whether the offence is culpable homicide or murder,

depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the ordinary course of nature to cause death. Though an act or illegal omission be so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death or such bodily injury.

The word 'act' includes omissions as well. Any omission by which death is caused will be punishable as if the death is caused directly by an act. 5 N. W. P. 44, 3 A W. N. 231.

The accused prepared sweets containing poison with the intention of giving them to her husband. The husband with some others ate it. One of the guests died in consequence of it. Held, that the accused was guilty of murder, as the intention of causing death does not mean the death of any particular person. 39 A 161, 15 A. L. J. 13, 17 Cr. L. J. 505, 36 I. C. 473. 22 M. L. J. 332 Foll.

In order that homicide by omission may be criminal, the omission must amount to what is sometimes called gross and sometimes culpable negligence.

The omission will be culpable homicide, if death is caused:—

(1) by an illegal omission with the intention that such omission should cause death;

(2) by an illegal omission with the intention that such

omission should cause such bodily injury as is likely to cause death;

(3) by an illegal omission with the knowledge that death is likely to be the result of such omission.

The following is the comparison of Ss. 299 and 300 I. P. C.

S. 299 I. PC.	S. 300 I. P. C.
A person commits culpable homicide, if the act by which the death is caused is done :—	Subject to certain exceptions culpable homicide is murder, if the act by which death is caused is done :—
(*a*) With the intention of causing death.	(1) With the intention of causing death.
(*b*) With the intention of causing such bodily injury as is likely to cause death.	(2) With the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused.
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
(*c*) With the knowledge that the act is likely to cause death.	(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

All murder is culpable homicide but all culpable homicide is not murder; thus S. 299 covers a wider ground than S. 300. The distinction between murder and culpable homicide not amounting to murder is a question of degree of probability

and depends generally on the nature of a weapon and on the way it is used. 14 Cr. L. J. 459, 20 I. C. 619. Murder as defined in Cl. 2 and 3 of S. 300 is, only an amplification of that part of S. 299, which speaks of an act done with the intention of causing such bodily injury as is likely to cause death. 18 P. R. 1893, 17 P. R. 1898. To render a culpable homicide a murder, the case must come within Cl. 1 to 3 or 4 of S. 300. 8 W. R. 47, 51. Intention is a matter of fact. 1 Weir. 300. Acting under a sudden impulse without exercising due care and caution constitutes the offence of culpable homicide. 18 A. W. N. 163. Death caused without intention or knowledge is not culpable homicide. 42 M. 547, 41 A. 686, 19 B. L. R. 902, 18 C. W. N. 1279, 17 A. L. J 56. Where intention to kill is present, it is always 'murder'; where it is a question of knowledge the degree of knowledge will be the deciding factor. Unpremeditated assault committed in the heat of passion upon a sudden quarrel thereby causing death of the deceased is not murder but may amount to culpable homicide. 4 W. R. 48.

The words 'sudden' implies that the fight should not have been pre-arranged. 24 W. R. 48; 40 A. 686. The lapse of time between the quarrel and the fight is very important. If there intervenes a sufficient time for passion to subside and reason to interpose, the killing will be murder.

Accused suspected his wife of being intimate with one M. and frequently remonstrated with and warned her: one night accused and his wife were sleeping in the courtyard of their haveli when, after some little time, accused awoke and found his wife's bed unoccupied: his suspicions being aroused, he immediately proceeded to the khola adjoining the haveli, where he found his wife and M. together: he attacked M. and killed him, and then attacked his wife and killed her also: he was placed upon his trial for the offence of murder and was sentenced to death, the Sessions Judge holding that the accused did not receive such grave and sudden provocation as to deprive him of the power of self control. On appeal, held

that the provocation received by the accused was grave and sudden, and he continued to be under the influence of provocation until he had killed his wife, and that he was entitled to the mitigation provided in exception (1) to S. 300 I. P. C. 68 I. C. 403, 23 Cr. L. J. 563.

Grave and sudden provocation—nature of.

The provocation must be grave and sudden and of such a nature as to deprive the accused of the power of self-control. The condition of the mind in which the offender was at the time of provocation has to be determined. 2 M. 122. It is not always a necessary consequence of anger, or other emotion, that the power of self control should be lost. 20 B. 215, 19 W. R. 35.

A person who flies into a passion without just cause and goes about slaughtering people may be insane but if he is sane he cannot defend his action on the ground of provocation. 22 Cr. L. J. 657, 63 I. C. 610.

The act must be done under the immediate impulse of provocation. 7 W. R. 27.

Exception (1) S. 300 I. P. C., does not contemplate that in order to entitle an accused person to earn the mitigation, the act must immediately follow the provocation. 23 Cr. L. J. 563, 68 I. C. 403.

The fatal blow should be clearly traced to the passion arising from that provocation. If a party, before any provocation given, intended to use a deadly weapon towards any one who might assault him, this would show that a fatal blow given afterwards was not to be attributed to the provocation, and the crime would therefore be murder. Again if the act was done after the first excitement had passed away, and there was time to cool, it is murder. 12 W. R. 68, 8 A. 635. 4 B. L. R. 6 see also 28 C. 571.

Accused killed his wife, whom he knew to be a woman of depraved character, because she refused to have sexual intercourse with him on the night of the occurrence and also abused him. The woman had often before refused such intercourse: Held, that the accused could not be said to have acted

under grave and sudden provocation, and was guilty of murder. 23 Cr. L. J. 140, 65 I. C. 572.

Before a person can claim the benefit of Exception (1) to S. 300 I. P. C., he must prove (a) that he was deprived of the power of self control, and (b) that the provocation was so grave and sudden as to reasonably justify such loss of self-control. In other words, it ought to be distinctly shown not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action but that that feeling had an adequate cause. In the absence of such proof, the atrocity of the offence will not be mitigated and the offender will not be able to escape the legal consequences of his act. 22 Cr. L. J. 657, 63 I. C. 610.

The accused is to prove that his act was removed from the category of murder by one of the exceptions. 17 A. L. J. 866.

The exception would not apply to a case where two bodies of men, for the most part armed with deadly weapons, deliberately entered into an unlawful fight, each being prepared to cause the death of the other, and aware that his own might follow, but determined to do his best in self-defence, and in the course of the struggle death ensued. 5 C. 31, 18 C. 434.

S. 301 I. P. C.:—Culpable Homicide by causing death of person other than person whose death was intended.

The section lays down that if a person commits culpable homicide, by causing the death of some person other than the person whose death was intended, the culpable homicide so committed by the offender is of the same description of which it would have been, if he had caused the death of the person whose death he intended to cause, or knew himself likely to cause.

Accused sent some sweetmeats containing arsenic to A, with the intention of causing her death. B & C also shared the sweetmeats with A and although all three of them became ill none of them died. Held, (1) that the accused was guilty of

an attempt to murder not only A but also B & C. (2) that the mere fact that the amount of arsenic was not sufficient to cause the death of A made no difference. 22 Cr. L. J. 194, 60 I. C. 50.

Where the accused intending to kill the husband of a woman, with whom he was carrying on an adulterous intrigue, waylaid him in the dusk, but by mistake killed a third party who came along the road is guilty of murder.

Where the accused intending to kill B, killed A by a blow with a highly lethal weapon whom he had no intention of killing is murder. 8 W. R. 78,

Where the prisoner gave some poisoned rice-water to an old woman who drank part herself and gave part to a little girl who died from the effect of the poison is murder. 12 W. R. 2.

S. 302. I. P. C:— Punishment for Murder.

Evidence:—Prove (1) that the death of a human being has actually taken place. That the murder has been committed by some one, is essentially necessary to be proved. (2) that such death has been caused by, or in consequence of, the act of the accused. Where there is no evidence to prove that the accused had anything to do with the death of the deceased, no conviction could stand. (3) that such act was done with the intention of causing death. Or that it was done with the intention of causing such bodily injury as (a) accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death; or that caused such death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

No discretion is given to a Court which convicts a person of an offence under this section to award or not the punishment provided. The only discretion allowed to the court is to

determine which of the two punishments prescribed should be awarded, regard being had to the circumstances of the particular case. 22 C. 805. The prosecution must prove the circumstances which ordinarily constitute the offence of murder, and the prisoner must prove the cirsumstances, if any which entitle him to the benefit of the exceptions. 4 W. R. 35, 8 C. W. N. 714. The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused for murder. 3 A. 383, 7 W. R. 13. When the body of the person said to have been murdered is not forth-coming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction. 11 C. 635. It is a proper discretion in not passing a sentence of death in a case in which dead body has not been found. 11 W. R. 20. There can be no conviction for murder or for culpable homicide not amounting to murder where corpus delicti is not established. 22 Cr. L J. 658, 68 I. C. 450. If the prisoner confesses in the most circumstantial manner to having committed a murder, the finding of the body is not absolutetly essential to a conviction. 4 W. R. 19. A person able to point out several spots connected with the murder is presumed to be concerned in it. 18 Cr. L. J. 6, 36 I. C. 838. The fact that blood stained garments are found in a house does not sufficiently prove that any particular member ofthe family in that house is guilty of murder, recently committed in the neighbourhood. 17 Cr. L. J. 226, 34 I. C. 642.

Where the facts clearly established that the accused, was last seen with the child alleged to have been murdered that he stripped her of most of her ornaments and sold them and that her body was next found in a well but the accused disclaimed all knowledge of the matter though the well was indicated by him, held, that the facts were sufficient to prove that the accused had committed a foul murder. 16 Cr. L. J. 167, 27 I. C. 551. Where the accused had an unnatural intimacy with the deceased who was murdered by sharp weapons and it was

proved that the deceased was last seen alive in the company of the accused and pointed out the place where the weapons which could have been used to inflict the blows were found, held, this was sufficient proof of guilt 20 Cr. L. J. 305, 50 I. C. 481.

When the only evidence against an accused person is a bundle of cloth which is identified as having been stolen from a murdered man, and there is no other admissible evidence on record against him to connect him with murder, he can be convicted only under 411 I. P. C., and not under 300. 14 Cr. L. J. 275, 19 I. C. 707. A conviction for murder on pure circumstantial evidence should be had only if the history of the case taken as a whole points unmistakably to the inference of the commission of the offence by the accused and no other reasonable hypothesis than that of his guilt could possibly be deduced from the facts before the court. 12 Cr. L. J. 412, 11 I. C. 596. The fundamental rule by which circumstantial evidence is estimated, is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than that of his guilt. Although it cannot be laid down as a proposition of law that the quantum or the value of evidence must depend upon the enormity of the crime yet it is safer to follow the established rule that "the fouler the crime is, the clearer and the plainer the proof ought to be". 22 Cr. L. J. 154, 59 I. C. 858. In a murder case, where the evidence points to the accused alone as the guilty person and there is no reasonable doubt about it, a conviction can be based on it, though there is no direct proof. 1914 M. W. N. 718, 16 Cr. L. J. 195, 27 I. C. 755.

Where the only reliable circumstantial evidence against the accused was that he had a motive to commit the crime and that he was seen running near the place of occurrence at or about the time of murder, held, that the evidence merely created a suspicion and was insufficient for a conviction. 1 Pat. L. T. 684, 59 I. C. 858. Where the only evidence against the

accused who were charged with the murder of a little girl was that of a girl of 10 years old, and the accused were in possession of the jewels of the murdered child and were not able to explain their possession of them, the evidence is sufficient to sustain, conviction. 6 M. L. T. 123, 11 Cr. L. J. 157, 4 I. C. 1051. There is no principle of law which prohibits the imposition of a death sentence in cases where the evidence is purely circumstantial. 16 M. L. T. 535, 1 L W. 1007. 1915 M W. N. 34, 16 Cr. L. J. 33, 26 I. C. 332. 22 Cr. L. J. 396; 61 I. C. 524.

Where no motive has been shown for the crime and there is no reliable evidence to implicate the accused it is not safe to convict an accused of murder on the dying declarations of the deceased. 5 M. L. T. 217, 11 Cr. L. J. 193, 4 I. C. 1127.

Grave discrepancies in the first report and subsequent evidence threw doubt in the case and gave the benefit of doubt. 15 Cr. L. J. 530, 24 I. C. 842. Though the motive for murder for one of the co-accused is proved satisfactorily while for others there is no satisfactory evidence, the High Court can uphold conviction without assigning motive. 17 Cr. L. J. 386, 35 I. C. 818. The mere absence of premeditation is not, in every case, a sufficient ground for imposing the lesser penalty for murder. Everything depends on the circumstances of the particular case. 22 Cr. L. J. 613, 63 I. C. 149.

Where Dhathura poision is administered by the accused so as to cause death he must be held guilty of an offence under 302 I. P. C., because though there was no intention to cause death he must have known that it was likely to cause death. 31 A. 148, 9 Cr. L. J. 383, 1 I. C. 765. Every sane person of the age of discretion is presumed to intend the natural and probable consequences of his own act and in deciding what are the natural and probable consequences of an act the only safe rule to apply is to regard every actual consequence as a natural and probable consequence unless and until the contrary is affirmatively shown. M and J attacked L with heavy lathis, intending to give L a sound

beating. M struck him twice on the head knocking him senseless to the ground, and J struck him on the back three or four times as he lay. L died of fracture of the skull caused by the blows dealt to him by M. Held, that J shared in the intention with which M. hit L., which was to cause such bodily injury as was sufficient in the ordinary course of nature to cause death, and that under 34 I. P. C., both were guilty of murder. 64 I. C. 838, 23 Cr. L. J. 54. Persons making an attack of violent and determined character followed by 16 wounds, rupture of healthy spleen and death, are guilty of murder whether they attacked with the intention to cause death or in a brutal manner regardless of consequences. 37 C. 315, 11 Cr. L. J. 417, 6 I. C. 921. The fact that a person is killed by repeated blows, negatives the plea that there was no intention to kill the deceased. 12 Cr. L. J. 214, 10 I. C. 119.

A brutal assault with lathis which results in the death of the person assaulted does not ordinarily amount to murder unless the accused intended to cause death or to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. 16 Cr. L. J. 710, 30 I. C. 998.

Accused, a young man, in a scuffle with another young man stabbed the latter with a pen knife in the abdomen and caused his death, held, that having regard to the facts :—

(*a*) That the weapon used was not a dangerous one.

(*b*) That it was a pure accident that the blow was struck in a tender region, the accused was guilty only of an offence under 326 I. P. C. 22 Cr. L. J. 658, 63 I. C. 450.

Where a person causes the death of another by a single blow from a stick, the criteria for determining whether or not he has committed the offence of murder, are, the nature of the weapon used, its size and weight, the manner in which it is used, and the actual injuries caused ; if the injuries are so severe and uncommon as to indicate the use of terrific force, the offence falls under 300, i. e., that he intended to cause injury sufficient in the ordinary course of nature to cause death,

even though the weapon used is not such as would of necessity have caused fatal injury. 23 Cr. L. J. 111, 65 I. C. 495.

Culpable homicide is not murder unless the act by which the death is caused is done with the intention stated in one or more of the clauses of section 300. Where the question is, whether the injuries caused are sufficient in the ordinary course of nature to cause death, the nature of the weapon used and of the injuries caused must be taken into consideration. Accused assaulted the deceased and inflicted no less than fifty injuries, but no blow was inflicted on any vital part with sufficient violence to cause serious damage, such as fracture of the skull; held, that the case fell under the second clause of section 304 I. P. C. 75 I. C. 689, 25 Cr. L. J. 1.

A person who administers a well known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and if death ensues he is guilty of murder, notwithstanding that his intention may not have been to cause death. 40 A. 360, 19 Cr. L. J. 382, 44 I. C. 686.

Charge of murder must be proved beyond reasonable doubt. 32 I. C. 838, 17 Cr. L. J. 102.

Deliberately causing death under the alleged impulse of delusion caused by superstitious belief is murder. 41 I. C. 142, 18 Cr. L. J. 766.

Where death caused under influence of drink was held to be murder. 35 P. W. R. 1917 Cr.

Youth is a ground to be taken into consideration in determining the punishment to be awarded for murder. 12 Cr. L. J. 443, 11 I. C. 792, see also 45 I. C. 840, 19 Cr. L. J. 648.

S. 303 I. P. C.:—Punishment for murder by life-convict.

Evidence :—Same as for S. 302.

Where a person under sentence of transportation for

life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to this section is that of death. 19 W. R. 45.

The words "being under sentence of transportation for life" indicate that the sentence of transportation must have been passed on the accused. It is immaterial whether he was already transported or not.

S. 304. I. P. C :—Punishment for culpable homicide not amounting to murder.

Evidence :—Prove (1) the death of the person in question. (2) that such death was caused by the act of the accused (3) that the accused intended by such act to cause death ; or that he intended by such act to cause such bodily injury as was likely to cause death; or he knew that such act of his would be likely to cause death.

This section creates no offence, but provides the punishment for culpable homicide not amounting to murder, and draws a distinction in the penalty to be inflicted.

Where there is knowledge that death will be a likely result, but intention to cause death or bodily injury likely to cause death is absent and if the act of the accused falls within either of the clauses 1, 2 and 3 of 300 I. P. C., but covered by any of the five exceptions, it will be punishable under the first part. See 12 Cr. L. J. 274 ; 10 I. C. 852. If the act comes under Cl 14 of 300 I. P. C., but is covered by any of the exceptions it will be punished under the second part. See. 17 Cr. L. J. 335 ; 35 I. C. 511.

Where death has resulted from a violent attack, the Magistrate must commit the accused to the court of Sessions on a charge of culpable homicide not amounting to murder. 1 weir. 288.

Unpremeditated attack on deceased by two persons without proof as to who struck fatal blow makes both guilty under S. 325 and not S. 304. 36 I. C. 131, 17 Cr. L. J. 451.

Where a man receives only one blow on the head and dies, and there is no evidence to show which of the two persons attacking him gave that blow, neither of the two will be convicted under this section but both of them can be convicted of an offence under 326 I. P. C. 36 C. 659, 10 Cr. L. J. 186; 2 I. C. 841.

Death caused by violent sexual intercourse with child wife is an offence under this section. 18 C. 49. Beating woman to drive out of her evil sprit by which she was believed to be possessed, result being fatal, is an offence under this section. 44 I. C. 679, 19 Cr. L. J. 375.

Where the cause of death of a person was (found to be) either due to concussion of the brain due to head injuries or possibly opium poisoning and the accused were charged with causing violence to the deceased under 304 I. P. C., it is bad in law to convict the accused under 304 I. P. C. 17 Cr. L. J. 147, 33 I. C. 627.

S. 304 (A) I. P. C:—Causing death by Negligence.

Evidence:—Prove (1) the death of a person in question. (2) that accused caused such death. (3) that such act of accused was rash or negligent, although it did not amount to culpable homicide.

In rash act, the party guilty neither intends evil, nor does he know that evil is likely, nor has he reason to believe that it is likely. On the contrary he does not think that evil will ensue. He thinks of the probable consequences of his act or omission, but from insufficient advertance, assumes that they will not ensue. 14 C. 566, 569. A rash act is primarily an overhasty act, and is thus, opposed to a deliberate act, but it also includes an act which though it may be said to be deliberate, is yet done without due deliberation and caution.

Negligence is the breach of a duty caused by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human

affairs, would do, or the doing of something which a prudent and reasonable man would not do.

This section does not apply to a case in which there has been the voluntary commission of an offence against the person.

Where the act is in its nature criminal, this section has no application. 12 M. 56, 12 Cr. L. J. 485, 12 I. C. 93.

A person who has sexual intercourse with his wife who had not attained puberty though above twelve years of age and causes her death is liable under 304. A, as the husband's right to enjoyment is subordinate to her personal safety. 18 Cr. L. J. 1003, 42 I. C. 731.

Acts, probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under S. 336, 337, 338 or 304 A, if done without due care to guard against the dangerous consequences. 39 C. 855 15 C. L. J. 512, 13 Cr. L. J. 195,14 I. C. 195, 16 C. W. N. 1055.

The lessees of a ferry are not liable for the loss of life caused by rough weather unless it is shown that the boat though over crowded was unseaworthy at the time of occurrence. 16 Cr. L. J. 72, 26 I. C. 664.

Dispensing poison mistaking it for quinine and administering it as such is a gross criminal negligence and conviction under the section was proper. 42 A. 272, 21 Cr. L. J. 367, 55 I. C. 735.

A person administering poison to another believing it to be a charm for making the other man poor is guilty under 304 (A) I. P. C., if death is eventually caused. 31 A. 290, 9 Cr. L. J. 522, 2 I. C. 214.

The accused administered to her husband a deadly poison believing it to be a love potion to stimulate his affection for her. The husband died from the effects of the poison. Held, that the accused was guilty of an offence punishable under 304 A, inasmuch as she acted both rashly and negli-

gently in giving as a love potion, a deadly form of poison. 17 B. L. R. 217, 16 Cr. L. J. 305, 28 I. C. 641.

A station master knowing a train to be standing at a particular point gives the 'line clear' in that direction is guilty of rash and negligent act under 304 A. 15 A. L. J. 590, 18 Cr. L. J. 815, 41 I. C. 335.

S 305 I. P. C :—Abetment of suicide of child or insane person.

Evidence :—Prove (1) the commission of suicide. (2) That the person who committed suicide was under eighteen years of age or was insane or delirious, or idiot, or intoxicated. (3) That the accused abetted the commission of such suicide.

The section applies when suicide is in fact committed.

Suicide is self-murder, i. e., it is a self-destruction by a person.

S. 306. I. P. C :—Abetment of suicide.

Evidence :—Prove (1) the commission of suicide. (2) the accused abetted the commission thereof (vide S. 107).

The section is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide.

Abetment of suicide is punishable under this section and attempt to suicide under 309 I. P. C.

Where some people gave ghee to the widow which, she poured over the fire and burnt herself, the accused were guilty of abetting suicide. 36 A. 26, 14 Cr. L. J. 634. 21 I. C. 682.

S. 307. I. P. C :—Attempt to murder.

Evidence :—Prove (1) that the death of a human being was attempted. (2) that such death was attempted to be caused by, or in consequence of the act of the accused. (3) that such act was done with the intention of causing death ; or that it was done with the intention of causing such bodily injury as (*a*) the accused knew to be likely to cause death or (*b*)

was sufficient in the ordinary course of nature to cause death.

In an attempt to murder every element of that crime is present except the fact that death does not take place.

A woman, throwing her child three years old into a small pond wishing that its death should fall as a curse on the head of some other woman who was quarrelling with her, can be presumed to have an intention to cause death of the child, and is guilty under 307 though the child was immediately saved. 11 Cr. L. J. 48, 5 I. C. 138.

Where the accused struck his wife on the neck with a hatchet he ought to be convicted under 324 I. P. C. and not under 307 I. P. C., since the blow with a hatchet would not ordinarily cause death. The act contemplated by 307 is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events. 15 B. L. R. 991, 14 Cr. L. J. 641, 21 I. C. 881.

If a person fires two successive shots towards the same person, an intention to murder is clear. 11 Cr. L. J. 171, 5 I. C. 602.

Held, that the act of the accused amounted to an attempt to commit murder and the deputy Magistrate should commit the accused to the Sessions and not try it himself, 5 M. L. T. 257, 11 Cr. L. J. 196, 4 I. C. 1134.

511 I. P. C., does not apply to attempts to commit murder, which are fully and exclusively provided for in the section. 14 A. 38.

S. 308. I. P. C :—Attempt to commit culpable homicide.

Evidence :—Same as S. 307.

The wording of the section is the same as the preceding one except that it deals with an attempt to commit culpable homicide.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that, if he thereby caused

death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

S. 309. I. P. C:—Attempt to commit suicide.

Evidence:—Prove (1) that the act of accused was an attempt. (2) that the attempt was complete by doing an act towards the commission of suicide.

This is the only instance in which an attempt to commit an offence is punishable but actual commission cannot be punished. Mere running to a well with the intention of committing suicide is not an attempt to commit suicide. 8 M 5., as the act amounts merely to preparation to commit suicide. Mere jumping into a well to avoid the Police cannot amount to an attempt to commit suicide in the absence of evidence that the jumping was to commit suicide. 14 B. L. R. 146, 13 Cr. L. J. 246, 14 I. C. 598. If a woman attempts to commit suicide owing to the painful labour and in consequence the child is born dead, she is guilty of attempting ot commit suicide only. 17 A. L. J. 478, 20 Cr. L. J. 395, 50 I. C. 1003.

Thug defined.

Whoever at any time after the passing of this act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompained with murder, is a thug. S. 310 I. P. C.

S. 311. I. P. C:—Punishment.

Evidence:—Prove (1) that accused was associated with other person or persons. (2) that he was associated after the passing of his Code. (3) that such persons, including accused, were associated for the purpose of committing robbery, or child-stealing, by means of, or accompanied with murder. (4) that such persons were habitually associated for that purpose.

Under 310 anyone who habitually associates with others for the purpose of committing robbery, etc., is a thug. Actual commission of any act is not necessary.

Causing of Miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births.

S. 312 to 318 I. P. C.

312 deals with the causing of miscarriage with the consent of the woman, while 313 I. P. C., deals with the causing of miscarriage without the consent. Under 312 such person as well as the woman who causes herself to miscarry are both punished but under 313 the person procuring the abortion is alone punished.

"Whoever," i. e., the woman herself, or any other person.

"Causes." Miscarriage must actually take place in consequence of what has been done.

"With child". The woman must as a fact be pregnant. Otherwise the woman and other people concerned could not be punished under 312, though she and other people concerned (if any) might be convicted of an abetment of the offence, or of an attempt to commit it, according to circumstances.

"Miscarriage", i. e., the premature expulsionof the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

"Quick with child." This refers to any point of time after which the woman first feels the movements of the child within her. This sensation is generally experienced by a woman about the fourth or fifth month of pregnancy.

Exception. Miscarriage may be caused if it be done in good faith, i. e., with due care and attention, (S. 52) and for the purpose of saving the life of the woman.

S. 312, I. P. C :—Causing miscarriage.

Evidence :—Prove (1) that the woman was with the child ; or (if under the second clause) that she was quick with child. (2) that accused did some act likely to cause a miscarriage. (3) that he did so voluntarily. (4) that such woman did miscarry in consequence. (5) that such miscarriage was not caused in good faith in order to save the woman's life.

A woman attempting to take her own life owing to the severe pains of labour and the child was born dead, is not guilty of causing miscarriage. 17 A. L. J. 478, 20 Cr. L. J. 395, 50 I. C. 1003.

S. 313. I. P. C:—Causing miscarriage without woman's consent.

Evidence:—Prove the same points as required in S. 312 I. P. C. and further it must be established that the woman did not consent to such abortion.

S. 314. I. P. C:—Death caused by act done with intent to cause miscarriage.

Evidence:—Prove (1) that the woman was with the child. (2) that accused did an act to cause miscarriage. (3) that he did so with that intention. (4) that such act caused the death of the woman. (5) (If the case comes under the second clause) that such act was done by accused without the consent of the woman.

Under this section it is immaterial whether the woman was pregnant or not but there must be an intent to cause miscarriage by means of "any act". The act in question must "cause" death.

Where a poisonous drug was administered to a woman to procure miscarriage, and it was not proved that the accused knew that the drug was likely to cause death, it was held that they had committed an offence under this section. 10 W. R. 59.

If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of culpable homicide, if Z agreed to run the risk, and murder, if Z did not so agree. The consent of the woman freely and intelligently given, is allowed to mitigate the offence.

Consent defined.

Consent is an act of reason, accompanied with deliberation, the mind weighing, as in balance, the good and evil on each side. Consent means an active will in the mind of a person to permit the doing of the act complained of, and knowledge

of what is to be done, or of the nature of the act that is being done, is essential to a consent to an act.

Consent when not valid.

A consent is not such a consent as is intended by any section of the Penal Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or if the consent is given by a person who from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. S. 90 I. P. C.

Consent and Submission compared:-

Every consent involves a submission; but it by no means follows, that a mere submission involves consent. Mere submission by one who does not know the nature of the act done cannot be consent.

S. 315. I. P. C:—Act done with intent to prevent child being born alive or to cause it to die after birth.

Evidence:—Prove (1) that the woman was with the child. (2) that accused did an act, before the child was born, calculated to prevent the child from being born alive, or to cause it to die after its birth. (3) that such act was done by the accused with that intention. (4) that such act was done, not in good faith, for the purpose of saving the mother's life. (5) that the child was born dead, or died after its birth. (6) that such death was caused by the abovementioned act of accused.

Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable.

S. 316. I. P. C:—Causing death of quick unborn child by act amounting to culpable homicide.

Evidence:—Prove (1) that the woman was quick with the child. (2) that the accused did an act to cause the

death of such child. (3) that the circumstances under which such act was done, were such as to make accused guilty of culpable homicide, if death has been caused. (Sec. S. 300). (4) that such act did cause the death of the quick unborn child.

This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening, and where the death is caused after the quickening and before the birth of the child. A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is only injured but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section. If a person strikes a pregnant woman and thereby causes the death of her quick unborn child, he will be guilty of the offences here defined, if the blow was intended by him to cause the woman's death or was one which he knew or had reason to believe to be likely to cause it. M. & M. 282.

S. 317. I. P. C:—Exposure and abandonment of a child under twelve years, by parent, or persons, having care of it.

Evidence:—Prove (1) that the child is under twelve years of age. (2) that accused is father or mother, or person having the care of that child. (3) that accused exposed or left such child in the place in question. (4) that accused so exposed or left the child with the intention of wholly abandoning it.

The section does not apply when children are left under the care of others. 16 W. R. 12.

The exposure contemplated by the code is one by which danger to life may immediately ensue. 18 A. 364, 366. But the Madras High Court has held that it is not necessary that the exposure and abandonment must be under such circumstances as to endanger the life or the health of the child. The only intention required to complete the offence is an inten-

tion of wholly abandoning the child. 1 weir. 331. The gist of the offence is the exposure and leaving with intention to wholly abandon. 24 M. 662, 23 A. W. N. 43. The legislature looks to the intention of the accused rather than to the consequences of the act done. 24 M 662. This section; applies when the child is exposed and no death supervenes. 2 A. 349. If the child dies, the person may be punished for murder or culpable homicide, a s the case may be 11 A. 349. Death must be the immediate and not a remoto consequence of the exposure. 10 W. R. Cr. 52. Where a woman deserted her illegitimate child of ten days old, but under circumstances in which it could and, as a matter of fact, did obtain food, and the child died after four days from natural causes, it was held that the mother could not be convicted under this section. 13 A. W. N. 100. Where a woman abandoned her newly born child by leaving it n a place which was quite close to a village and near a public road, and the child was soon discovered, it was held that she was guilty of the offence. 23 A. W. N. 43. Person receiving the infant from its mother on the distinct understanding that the mother never desired or wished to get back the child is in law a person having care of that child. 41 B. 152, 18 B. L. R. 934, 18 Cr. L. J. 98, 37 I. C. 306. Where after birth, of an illegitimate child a woman threw it into a bush and concealed the fact and never showed any solicitude for the child, she commits an offence under the section. 15 Cr. L. J. 525, 24 I. C. 837. The prosecution must prove beyond all reasonable doubt, that the accused had exposed or left a child under the age of twelve years in some place with the intention of wholly abandoning it. Mere neglect or temporary abandonment is insufficient. In cases of reasonable doubt as to the intention with which the child was left, the accused is entitled to the benefit of the doubt. 21 Cr. L. J. 253, 55 I. C. 205.

S. 318. I. P. C:—Concealment of birth by secret disposal of dead body.

Evidence:—Prove (1) the birth of the child. (2) that the child died either before, during, or after, its birth,

(3) that accused buried or otherwise disposed of the dead body. The prisoner should have done some act towards disposal of the body after the child was dead. The dead body must be found, and identified as that of the child of which she is alleged to have been delivered. (4) that such burial or disposal of the body was secretly done. (5) that accused thereby intentionally concealed, or endeavoured to conceal, the birth of such child. Mere proof that a woman was delivered of a child and allowed two others to take away its body, was held to be insufficient to sustain an indictment against her for concealment of birth.

This section refers to the disposal of a deadbody secretly and does not meet the case of a person depositing a child alive in any place. 1911 M. W. N. 379. Leaving a dead body of a child in a public place near a number of houses does not amount to secret depositation of the body under S. 318 12 Cr. L. J. 562, 12 I. C. 550, 14 Cr. L. J. 525, 20 I. C. 1005. It is immaterial whether such child died before or after its birth. It should be distinctly proved that the child was dead at the time of disposal. 1911 M. W. N. 379. The child must have arrived at such maturity that it might have been born alive. 4 M. H. C. R., App. 63. Concealment of the birth of a foetus four months old is no offence. But if the foetus is six or seven months old its concealment is an offence. 1 weir. 334.

Ss. 319 to 338.

Hurt.

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. 319 I. P. C. An act neither intended nor likely to cause death is "hurt" even though death results in consequence. 18 W. R. 29, 3 A. 597.

The following kinds of hurt only are designated as "grievous":—

First:—Emasculation.

Secondly:—Permanent privation of the sight of either eye;

Thirdly :—Permanent privation of the hearing of either ear.

Fourthly :—Privation of any member or joint.

Fifthly :—Destruction or permanent impairing of the powers of any member or joint.

Sixthly :—Permanent disfiguration of the head or face.

Seventhly :—Fracture or dislocation of a bone or tooth.

Eighthly :—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits. 320 I. P. C.

N. B :—Remaining twenty days in the hospital is not sufficient, that during that time the person was unable to follow his ordinary pursuits must be proved. 19 B. 247.

HURT
is
either

Simple (319)		Grievous (320)	
Ordinary	Aggravated	Ordinary	Aggravated
321, 323, and 334 I. P. C.	Ss. 324, 327, 328, 330, 322,	322, 325, and 335.	326, 329, 328, 331, and 333 I. P. C.

S. 319. I. P. C :—HURT.

Evidence :—Prove (1) that the accused by his act caused bodily pain, disease, or infirmity to complainant. (2) that accused did such act intentionally or with a knowledge that it would cause the hurt, &c. (3) that such hurt, &c., was caused without provocation.

S. 320. I. P. C :—Grievous Hurt.

Evidence :—Prove (1) that accused caused hurt of any of the kinds described in S. 320. (2) that accused caused intended, or knew that he was likely to cause, grievous hurt of any kind described. (3) that accused did so voluntarily.

S. 321. I. P. C :—Voluntarily causing hurt.

S. 322. I. P. C :—Voluntarily causing grievous hurt.

'Voluntarily' defined

A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. S. 39 I. P. C.

The code makes no distinction between cases in which a man causes an effect designedly and cases in which he causes it knowingly or having reason to believe that he is likely to cause it. If the effect is a probable consequence of the means used by him he causes it 'voluntarily' whether he really meant to cause it or not. The accused must answer for the act just as if he had intended to cause it. He can not urge that he did not know or was not sure that the consequence would follow.

S. 323. I. P. C :—Punishment for voluntarily causing hurt.

Evidence :—Prove (1) that accused by his act caused bodily pain, disease, or infirmity to complainant. (2) that accused did such act intentionally or with knowledge that it would cause the hurt, &c. (3) that such hurt, &c., was caused without provocation.

Where an offender uses criminal force which actually causes hurt, the offence falls under 323 I. P. C. Pulling a woman by the hair is held to be this offence. 1883 weir 3rd edn., 196.

Where death is caused, Magistrates should be careful not to take upon themselves to absolve defendants from the

grave charges of murder or culpable homicide and convict for hurt or grievous hurt, unless it is quite clear that there is not sufficient evidence to justify a commitment. 12 W. R. Cr. 7.

The fact of death supervening upon infliction of hurt is not imputable to the person who inflicted the hurt, if all he intended or knew to be likely was hurt. The conviction in such cases must be for hurt only. 2 A. 5-22, 3 A. 597. A, a husband, being provoked by his wife B, gave her a chance kick on the spleen which was diseased though he did not know it. B died. Held, that A had committed hurt. 8 W. R. Cr. 29. Death of a child caused by blow aimed at another accidently falling upon it is only simple hurt. 21 B. L. R. 1110. The accused, who had a quarrel with his debtor over non-discharge of a loan pelted brick-bats at his house knowing that there were occupants in it, and hurt one of them who was under medical treatment for ten days. Held, that the accused should be convicted under 323 and not under 336 I. P. C., as the hurt caused was the natural and probable consequence of his act. 17 Cr. L. J. 465, 36 I. C. 145. Where the accused gave blows and kicks to the deceased simply with intent to give him a good thrashing which resulted in his death, should be convicted under 323 in absence of express proof that he intended to cause death or grievous hurt. 57 I. C. 826. On a finding on appeal that there was probably an altercation and squabble between the parties and that only a technical offence was committed, the accused should be acquitted. 20 Cr. L. J. 303, 50 I. C. 351. Two of the four persons with the common object of beating the complainant assaulted him while the other two stood ready armed with lathis to take part in the assault if required. Held, that the latter two were guilty under 323 I. P. C. 18 Cr. L. J. 382, 38 I. C. 766. It is improper to arrive at a finding of guilty under 323 I. P. C., unless there is a clear finding on evidence although an enmity and a fight have been proved, and serious injuries have resulted. 22 Cr. L. J. 200, 60 I. C. 56.

A criminal prosecution for causing hurt does not abate by reason of the death of the person hurt. 13 L. W. 379.

S 324. I. P. C:—Voluntarily causing hurt by dangerous weapons or means.

Evidence:—Prove (1) the hurt. (2) that it was unprovoked. (3) that accused caused it by means of an instrument for shooting, stabbing, or cutting or by an instrument used as a weapon likely to cause death; or by means of fire &c., or by means of any poison, &c., or by means of any substance which it is deleterious to the human body to inhale, &c., or by means of any animal.

It is not necessary that the manner of use of the weapon must be such as is likely to cause death. Such an element would compose a crime of a wholly different character. 7 M. H. C. App. 11.

It is merely the nature of instrument that should be taken into consideration. 1 U. B. R. 311. Razors and scissors are instruments for cutting. 19P. R. 1902.

Causing hurt by the administration of a substance which if administered in small quantities is not deleterious, is punishable under this section. 5 Q. B. D. 307, 309.

If persons are charged under 148 with rioting armed with deadly weapons, and also under 324 I. P. C., with causing hurt with dangerous weapons, the charges are alternative in character, and conviction and sentence must take place under one or other of the sections. 10 W. R. Cr. 63.

S. 325. I. P. C:—Punishment for voluntarily causing grievous hurt.

Evidence:—Prove (1) that accused caused hurt of any of the kinds described in S. 320. (2) that accused intended, or knew that he was likely, to cause grievous hurt of any kind so described. (3) that accused did so voluntarily.

A struck B, a woman who was carrying a child in her arms at the time, some violent blows on the head and shoulders,

One of the blows fell on the child's head, from the effects of which it died. Held, that A was guilty of causing grievous hurt to the child. 3 C. 628. 13Cr. L. J. 471.

If a person accused of an offence under this section, is convicted only of a minor offence included therein, e. g., of an offence under 335 I. P. C., he may be punished for such, although he was not charged with it.

Before any one could be convicted of causing grievous hurt, it must be proved that there was an intention on his part to cause grievous hurt or at least knowledge that it would be caused. The imposition of the punishment of imprisonment on conviction for grievous hurt is obligatory. 15 Cr. L. J. 192, 22 I. C. 768. Where two persons were charged and convicted of an offence of causing grievous hurt, but hurt was caused by the blow inflicted by only one of them, the conviction of the other for grievous hurt is illegal without a finding that he participated with the other in the intention of causing grievous hurt. 7 Cr. L. J. 173. The refusal of a third party to compromise is no sufficient reason to refuse composition, if the complainant and the accused are willing to compromise. 15 Cr. L. J. 567, 24 I. C. 975. An accused who is proved to have struck the deceased with a lathi on the head and caused a fracture of the skull which resulted in death, is guilty under 325 I. P. C. 20 Cr. L. J. 139, 49 I. C. 171. Doubt as to which of assailants struck the fatal blow which caused death will not justify conviction under 304 I. P. C., but only under 325. 40 A. 103, 16 A. L. J. 11.

An intent to cause grievous hurt may be inferred from the circumstances of the case and the nature of the injury caused. 13 Cr. L. J 471, 15 I. C. 311.

S. 326. I. P. C:—Voluntarily causing grievous hurt by dangerous weapons or means.

Evidence:—Prove (1) the causing of grievous hurt by accused. (2) that accused received no provocation for the same. (3) that such grievous hurt was caused by means of an

instrument for shooting, &c., or by means of any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire, &c., or by means of any substance which it is deleterious to the human body to inhale, &c., or by means of any animal.

This section applies only to the person who does a substantive act himself, namely, inflicts a blow which causes grievous hurt as defined in the code. 6 C. W. N. 98.

The amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether at the instance, or long after the husband found himself dishonoured. 4 W. R. 17. A Sessions Judge who while upholding the conviction of a person for cutting the nose of his wife held, that the nose cutting is an offence for which leniency is out of place. 16 Cr. L. J. 782, 31 I. C. 382. Death caused in consequence of attack with cane and chopper is only grievous hurt, there being no intention. 17 A.L. J. 56. Death caused by administration of dhatura for purpose of committing theft is not murder but an offence under this section. 19 P. R. 1919, Cr.

S. 327. I. P. C:—Voluntarily causing hurt to extort property, or to constrain to do an illegal act.

Evidence:—Prove (1) that accused caused hurt. (2) that accused caused such hurt in order to extort from the sufferer, or person interested in him, some property or valuable security, or that accused caused such hurt in order to constrain the sufferer, or a person interested in him, to do something illegal, or to facilitate the commission of an offence.

Before convicting a person under this section, the court must ascertain for what purpose the suffering was caused; whether it was directed wholly at the sufferer or at another through him. M & M 294.

S. 328. I. P. C:—Causing hurt by means of poison, &c., with intent to commit an offence.

Evidence :—Prove (1) that the substance in question is a poison, or any stupefying, intoxicating, or unwholesome drug, &c. (2) that accused administered or caused complainant to take such substance. (3) that accused did as above with intent to cause hurt or knowing it to be likely that he would thereby cause hurt; or that accused intended to commit or facilitate the commission of an offence.

To convict under the section there must be not merely an administration of a drug but the intention specified in the section. 15 Cr. L. J. 599, 25 I. C. 351. To merely procure a dangerous drug at the request of another is not to administer it. 31 L. J. (M. C.) 145. To administer an innoxious substance intended to act as a charm is no offence. 1 W. R. Cr. 7. The offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupefying, intoxicating, or unwholesome, drug, is administered. To constitute administering, it is not necessary that the poison should be delivered by the hand of the party. Putting poison in a place where it is likely to be found and taken is an attempt to administer.

It is not necessary that the hurt should be caused to any particular person intended, or that the person injured or likely to be injured should have been previously known.

Where the accused mixed milk of bush juice in his toddy pots, knowing that if drunk by a person it would cause injury with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by some soldiers, who purchased it from an unknown vendor, it was held that he was guilty under this section. 5 B. H. C. Cr. 59.

Where dhatura was administered with the object of facilitating robbery in such quantity that the person to whom it was given died in the course of a few hours, the court convicted the accused of murder 302 I. P. C. 31 A. 148 over ruled 30 A 568.

S. 329. I. P. C :—Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

Evidence :—Prove (1) that accused caused grievous hurt. (2) that accused caused such grievous hurt in order to extort from the sufferer, or a person interested in him, some property or valuable security ; or that accused caused such grievous hurt in order to constrain the sufferer, or a person interested in him, to do something illegal, or to facilitate the commission of an offence.

This section is similar to 327 I. P. C., the only difference is that the hurt caused under it is grievous.

S. 330. I. P. C :—Voluntarily causing hurt to extort confession, or to compel restoration of property.

Evidence :—Prove (1) that the accused caused hurt. (2) that accused caused such hurt in order to extort from the sufferer, or a person interested in him, a confession, or some information. (3) That such confession or information was required, as possibly leading to the detection of an offence, or of some misconduct.

The intent under the first part of the section must be to extort confession of, or information regarding, some offence. it is immaterial whether the offence or misconduct has been committed. 20 W. R. Cr. 41.

An extortion of a confession of witchcraft would not fall under this section. 18 W. R. Cr., 23.

'Demand' under this section must be one with respect to property. Hence, where the accused in order to constrain his wife to return to his house, caused hurt to her, S. 324 I. P. C., and not this section, was held to apply. 11 M. 257.

The information sought for may be for the advancement of justice, the claim or demand may be a just claim, but the law will not tolerate the employment of such means as it is made punishable, even if it be for an honest end. M. & M. 297.

Where the accused, a constable, during an enquiry into a theft case, violently beat the deceased, who died about

nine days afterwards from the effects of the beating, it was held that he was guilty under this section. 11 C. 530.

Where the accused stood by and acquiesced in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he had committed abetment of the offence under this section. 20 B. 394.

The section contemplates immediate connection between assault and restoration of property. 5 P. L. W. 109, 46 I. C. 525, 19 Cr. L. J. 749.

S. 331. I. P. C :—Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Evidence :—Prove (1) the same points as required for S. 330, showing that the hurt caused was grievous hurt.

This section is similar to the preceding section except that the hurt caused under it should be 'grievous'.

If torture of the police in exacting confession or admission causes grievous hurt resulting in death does not come under the definition of murder, it is an offence under 331 I. P. C. 18 Cr. L. J. 710, 40 I. C. 710.

S. 332. I. P. C :—Voluntarily causing hurt to deter public servant from his duty.

Evidence :—Prove (1) that the accused caused hurt. (2) that the person so hurt was a public servant. (3) that such public servant was then discharging his duty as such, or prove (1) and (2) as above. (3) that accused did so, with intent to prevent or deter such public servant, or any other public servant, from discharging his duty ; or that accused did so in consequence of something done or attempted to be done by such public servant, in the lawful discharge of his duty.

332 I. P. C., resembles 353 I. P. C. Under it there is causing of hurt to the public servant : under 353 I. P. C there is assault or criminal force for the same purpose.

The public servant must be acting in the discharge of his duty as such public servant. If he was acting in his private capacity no offence would be committed.

The protection given by this section is not confined to public servants, but will also extend to persons acting in good faith under their directions.

"In the discharge of his duty", i. e., in the discharge of a duty imposed by law on such public servant in the particular case; and the words do not cover an act done by him in good faith under colour of his office. 18 A 246, 15 A. L. J. 813, 40 A. 28. Where a blow was struck by the accused with an umbrella to a public servant this offence was held to have been committed. 24 W. R. 67. A constable who carries out an order of a Magistrate which had ceased to have force by expiration of time, is not, discharging a duty imposed by law, under S. 332 I. P. C., and therefore a person causing hurt to the constable executing the order, is not liable except under 323 I. P. C. 40 A. 28, 15 A. L. J. 813, 19 Cr. L. J. 5, 42 I. C. 917. In carrying out a search a Police officer is bound, under 103 Cr P. C., to call upon two or more respectable inhabitants of the locality to attend and witness the search, and if he omits to do so a house holder would be justified in closing the door and refusing ingress into the house, and would not be guilty of an offence under 332 I. P. C. 42 A 67, 17 A. L. J. 1047, 20 Cr. L. J. 695, 52 I. C. 663.

This section has no operation when the property is net private property of the officials and where the officials are protecting their property in their private capacity. 12 Cr. L. J. 236, 10 I. C. 278.

A police constable investigating an offence under 457 I. P. C., is empowered, under 54 Cr. P. C., to arrest without an order from a Magistrate or his superior officer, persons against whom a reasonable suspicion of having been concerned in the burglary exists, and if any of such persons resists the wish of the constable by force, he is guilty of an offence under 332, if he causes hurt; or under 353 if an assault is simply committed and he is not protected under 99. 7 M. L. T. 386 see also 11 Cr. L. J. 423, 6 I. C. 956, Dis. 18 A 246, and 26 C. 630.

S. 333. I. P. C :—Voluntarily causing grievous hurt to deter public servant from his duty.

Evidence:—Prove the same points as required for S. 332, showing that the hurt caused was grievous hurt.

This section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous.

A person who resists a police officer conducting an unauthorised search outside the limits of his station is not guilty of offence under 333 I. P. C. 24 M. L. T. 96, 1918 M. W. N. 526, 8 L. W. 225, 20 Cr. L. J. 145, 49 I. C. 337.

S. 334. I. P. C :—Voluntarily causing hurt on provocation.

Evidence:—Prove the same points as required for S. 323.

This section serves as a proviso to S. 323 and 324 I. P. C.

Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under this section, and not under 324 I. P. C. 1 B. H. C. 17.

The burden of proving sudden provocation, and that the accused neither intended nor knew that he was likely to cause hurt to any person other than the person giving the provocation, would lie on the accused.

The use of the abusive words 'begger' and 'Bhaduwa' to a person of the gentleman class may constitute a grave and sudden provocation. There is no right of private defence where the apprehension of danger to the body ceases. 14 Cr. L. J. 442; 20 I. C. 602.

S. 335. I. P. C :—Voluntarily causing grievous hurt on provocation.

Evidence:—Prove the same points as required for S. 325.

This section serves as a proviso to S. 325 and 326 I. P. C.

A person who, by a single blow with a deadly weapon killed another, entering at the dead of night into a dark room where he and his wife were sleeping separately, for the purpose of having criminal intercourse with her, was held guilty of causing grievous hurt on a grave and sudden provocation. 3 W.R. 55. A. husband, suspecting his wife of infidelity hid himself so as to see her with her paramour, and having seen an improper act committed, he came out and caused grievous hurt to the wife. It was held that assuming the provocation to be "grave" it was not "sudden" within the meaning of this section. 9 A. W. N. 9.

Where the accused was found guilty of cutting off the nose, the act is one which imports deliberate design. The plea of grave and sudden provocation or the excuse it implies in such cases will not have by any means the same effect as in the case of a man who in sudden and provoked anger strikes a blow. 17. B. L. R. 68, 16 Cr. L. J. 168, 27 I. C. 552.

336 I. P. C:—Act endangering life or personal safety of others.

Evidence :—Prove (1) that the accused did the act in question. (2) that it was done rashly or negligently. (3) that it was such as to endanger the life or personal safety of others.

The offence punishable by this and the following two sections is the doing of an act so rashly or negligently as to endanger human life or the personal safety of others, even though no harm follows.

"Rashly or negligently." See Ss. 279, 280 and 304 A I. P. C.

A car driver who did not wear spectacles as prescribed by the license for defective sight could not be convicted under 336 for collision by accident, as no rash act on his part without spectacles was made out. If the eye-sight is materially defective, it is a rash act for a motor driver to drive a car without specetacles. But mere omission to wear spectacles is not an

offence. 42 B. 396, 20 B. L. R. 376, 19 Cr. L. J. 605, 45 I. C. 509.

During a festival, a temple becomes a place of public resort and it is the duty of the person in charge, to take all reasonable precautions necessary to ensure the safty of those crowding thither by his license and invitation. If he omits to enclose a well standing by the path which the pilgrims take to reach the shrine with the result that a man and a boy fell into the well, he is gnilty of an offence under 336 I. P. C. 18 C. W. N. 1176, 16 Cr. L. J. 131, 27 I. C. 195.

337 I. P. C :—Causing hurt by act endangering life or personal safety of others.

Evidence :—Prove (1). (2), and (3) as for 336; and further (4) that hurt was actually caused.

This section applies only to acts done without any criminal intent. Personal injury intentionally caused is neither a rash nor a negligent act. 1904 U. B. R. 6.

The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of 286 I. P. C. But where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single bullet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section. 28 A. 464.

A love potion administered to her husband by accused No. 1, to the knowledge of accused No. 2 and No. 3, who were aware of its nature, without care or caution makes accused No. 1, liable under 337, I. P. C. Accused No. 2 guilty of Ss. 307 and 107 I. P. C. Accused No. 3 guilty of Ss. 307 and 109 I. P. C. 19 B. L. R. 54, 18 Cr. L. J. 443, 38 I. C. 1003.

338 I. P. C :—Causing grievous hurt by act endangering life or personal safety of others.

Evidence :—Prove (1), (2), (3) as for 336, and (4) that such act caused grievous hurt.

Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under S. 337 or 338, although the boy might have contributed to his own injury by going to sleep on the side of the road. 1884 Un. Cr. C. 198. Where the accused's carriage which was driven at an ordinary pace, on a dark night, knocked down an old deaf man and killed him, it was held that the question for the court was whether there was any evidence that the death of the deceased was induced by an act negligently or rashly directed by the accused. If there was no such evidence the accused could not be convicted. 6 M. H. C. App. 31. Discharging gun in place where persons were expected to pass and causing grievous hurt thereby is an offence under this section. 13 Cr. L. J. 703, 16 I. C. 511. The accused performed an operation with a pair of scissors on the lid of the complainant's eye, and stiched the wound with ordinary thread and needle. The operation was needless and performed in a primitive way without any precautions. The complainant's eyesight was damaged permanently to a certain extent. It was held that the accused was guilty under 337 and not under 338 as there was no permanent privation of the sight of either eye. 39 B. 523, 16 Cr. L. J. 437, 17 B. L. R. 384, 29 I. C. 69. Accused owning a paddy field in a jungle tract, discharged a gun in the direction of a footpath close to his field through which complainant was passing. The shot hit the complainant in the leg, which had to be cut off. The accused knew that the foot-path was generally used by the public; held, the accused was guilty of culpable negligence under 336 I. P. C. 13 Cr. L. J. 703, 16 I. C. 511.

Ss. 339 to 348 I. P. C. — Wrongful restrained and Wrongful confinement.

339 I. P. C:—Wrongful restraint.

Evidence:—Prove (1) voluntary obstruction of a person. (2) the obstruction must be such as to to prevent that person from proceeding in any direction in which he has a right to proceed.

This section relates to voluntary obstruction by a person and not to obstructions which are not voluntarily continued by the persons accused of the obstruction throughout the time the obstruction lasts. 9 B. L. R. 30.

It is a wrong against the person only, so where the obstruction was to the cart and not to the person without the cart, no offence under this section was committed. 15 B. L R. 103, 14 Cr. L. J. 177, 19 I. C. 177 but see 10 W. R. 35. The obstruction must be physical. A verbal prohibition or remonstrance does not amount to such obstruction. 1Wier. 339.

Wrongful restraint is an offence against a person, so when a man is himself unobstructed but hindered from driving a bullock cart through a passage is not wrongfully restrained. 15 B. L. R. 103, 14 Cr. L. J. 177, 19 I. C. 177, 19 Cr. L. J. 445; 44 I. C. 973.

Punishment for the offence is provided in 341 I. P. C.

"Wrongful." The restraint or confinement must be wrongful, and therefore all cases of legal arrests and imprisonment are excluded from the operation. 10 B. 506,

So also a restraint imposed under a bonafide mistake of fact is not wrongful.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

A, a court peon, and two of the decree-holder's men went to execute a warrant against B. A palki with closed doors was observed to be coming out of the male apartments of B's house. A believing that B was effecting his escape therein, stopped and examined it in spite of the attendants' protests. Inside was a pardanishin lady of rank. Held that A was not guilty of an offence under the section. 24 C. 885. A landlord prevented a tenant of his who was holding over, from entering the room which the tenant had rented. It is wrongful restraint 42 B 531, 21 B. L. R. 261, 20 Cr. L. J. 417, 51 I. C. 193

Where the accused obstructed the complainant from using his right of way on the field of the accused where the right of way was not sufficiently established, the accused cannot be found guilty under 341, unless malafides of the accused and the right of way were sufficiently established. 11 Cr. L. J. 495, 7 I. C. 493. Putting lock in the outer door of a house during the temporary absence of the inmates, and thereby obstructing them from entering the same will amount to wrongful restraint. 34 M 547, 9 M. L. T. 103, 11 Cr. L. J. 708, 8 I. C. 757.

To justify a conviction under 341, I. P. C., it must be fouud that the person complaining has a right to proceed along the path and that he was obstructed from doing so. The mere ploughing up of a mamul path does not amount to an obstruction within the meaning of 339 I. P. C. 2 L. W. 1035, 16 Cr. L. J. 701, 30 I. C. 749.

340 I. P. C :—Wrongful confinement.

Evidence :—Prove (1) wrongful restraint of a person. (2) such restraint must prevent that person from proceeding beyond certain circumscribing limits.

Punishment is provided in S. 342 I. P. C.

Ss. 343 to 348 deal with six cases of aggravated wrongful confinement.

"Confinement." The essence of this is prevention from passing beyond some boundary, large or small, "defined by a will or power exterior to our own."

Neither malice, nor bad faith, nor ill-will is necessary to constitute an offence under these sections. 13 B. 376.

341 I. P. C :—Punishment for wrongful restraint.

Evidence :—Prove (1) that the accused obstructed the person. (2) that such obstruction prevented the person from proceeding in a direction in which he had a right to proceed. (3) that the accused caused such obstruction voluntarily.

The obstructor must intend or know or have reason to believe it to be likely that the means adopted would cause the obstruction of the complainant. 1910 M. W. N. 727.

When one of two co-owners leased a shop to the complainant without the consent of the other co-owner and the latter put a lock on the shop, he can not be convicted of an offence under S. 341. 20 B. L. R. 106, 44 I. C. 463.

The voluntary obstruction of any person entering upon the land under a bonafide colour of title is not an offence under S. 341. 15 Cr. L. J. 532, 24 I. C. 844.

P was presented as an emigrant at lessor's Binny & Co's depot where he received meals and money. When he desired to leave the depot, he was prevented from doing so by the accused. Held, that an offence under S. 341 was committed. 21 M. L. J. 439, 12 Cr. L. J. 212, 10 I. C. 107.

Any private individual has the right to place a restraint upon a person, who not only threatens to commit a breach of the peace, but is a danger to other inhabitants. 22 Cr. L. J. 412, 61 I. C. 652 (M).

342 I. P. C :—Punishment for wrongful confinement.

Evidence :—Prove (1) that the accused obstructed the complainant. (2) that such obstruction was voluntary, (3) that the effect of such obstruction was to restrain that person from proceeding beyond a certain limit. (4) that the restraint was wrongful.

A decree holder is guilty under the section, if he causes arrest of the judgment debtor while returning from court under circumstances mentioned in S. 135 C. P. Code and the court officer who arrests or makes over the warrant of arrest to his subordinate for compliance is also guilty with the decree-holder. The fact that the judgment-debtor when returning from court stopped in the way for some private work does not deprive him of the privilege afforded by law. 17 Cr. L. J. 525, 36 I. C. 493.

343 I. P. C :—Wrongful confinement for three or more days.

Evidence :—Prove (1) to (4) as for S. 342 and (5) that such restraint was for a period of three or more days.

Confining seduced mistress in brothel and restricting her movements is an offence under the section. 42 B. 181, 20 B. L. R. 79. 19 Cr. L. J, 258, 44 I. C. 114.

344 I. P. C:—Wrongful confinement for ten or more days.

Evidence :—Prove (1) to (4) as for S. 342 and (5) that such restraint was for a period of ten or more days.

345 I. P. C:—Wrongful confinement of person for whose liberation writ has been issued.

Evidence :—Prove (1) that the accused kept the person in confinement. (2) that such confinement was wrongful. (4) that a writ of liberation had been duly issued. (4) that the accused knew of such writ, when he kept the person wrongfully confined.

346 I. P. C:—Wrongful confinement in secret.

Evidence :—Prove (1) to (4) as for S. 342; and (5) that such confinement was secret against (a) any person interested in the captive, or (b) a public servant, or (c) discovery of the place of confinement.

The nature of the confinement must indicate the intention of preventing the discovery of the person confined. 9 C 221.

S. 347 I. P. C:—Wrongful confinement to extort property or constrain to illegal act.

Evidence :—Prove (1) to (4) as for S. 342; and (5) that confinement was for the purpose of (a) extorting property, or (b) the giving of information which might facilitate the commission of an offence. (6) that such extortion or constraint was from, or of, the person confined, or someone else interested in him.

This and the next section may be compared with Ss. 329 and 330, as the aggravating circumstances mentioned in the former are the same as in the latter.

A Head constable in charge of a police Out Post agreed to drop proceedings against K, who had been arrested on a

certain charge, on condition that K paid to him a sum of money. The Head constable sent away K in charge of two chowkidars who subsequently confined K at various places and maltreated him. It was held that it would be impossible to hold the Head constable guilty of abetting an offence under this section in the absence of proof that he gave definite orders to that end. 31 C. 710.

S. 348 I. P. C:—Wrongful confinement to extort confession, or compel restoration of property.

Evidence:—Prove (1) to (4) as for S. 342; and (5) that such confinement was for the purpose (a) of extorting a confession, or (b) some information, etc., or (c) of constraining the restoration of some property, or (d) valuable security, etc. (6) that such extortion or constraint was from, or of, the person confined, or some other person interested in him.

The appellants charged the prosecutor with theft, and he was handed over to the police. It was held that the police, and not the appellants, were responsible for any oppression or extortion practised by the police on the prosecutor while in confinement. 1 W. R. 26.

Criminal Force and Assault.

Ss. 349 to 358.

S. 349 I. P. C:—This section does not define any offence, but gives an elaborate explanation of the use of force. Under the terms of the section to cause motion, change of motion, or cessation of motion, by one or other of the three means mentioned, to another person, either directly, or indirectly by bringing some substance into contact with his body, or with something that he is wearing or carrying, or with something that thereby affects his sense of feeling, is to use force.

The term 'force' in S. 349 I. P. C., is force used in connection with human body. 19 C. W. N. 1150, 15 Cr. L. J. 720, 26 I. C. 168. 22 Cr. L. J. 329, 61 I. C. 57. The force must be intentionally used. 12 A. L. J. 154.

Where the accused raised lathis to strike a porson who had to flee to save himself, they were guilty of using criminal

force. 12 A. L. J 154, 15 Cr. L. J. 231, 23 I. C. 183. Dist. 1 A. L. J. 602.

S. 350 I. P. C:—Criminal force. 'Force' becomes criminal when it is used (1) without consent and in order to the commiting of an offence, or (2) when it is intentionally used to cause injury, fear, or annoyance to another to whom the force is used.

Mere submission by one who does not know the nature of the act done cannot be a consent. 18 C. 484, 492.

Where the accused went to the field of another and cut the crops sown by him and on the latter resisting they raised their sticks to strike him and that other ran away to save himself, it was held that the accused were guilty of using force by means of bodily power within the meaning of this section. 12 A. L. J. 154.

Assault defined.

The accused having been brought to a certain place to serve as a cooly attempted to run away, but was obstructed and prevented from doing so by a peon. In the struggle which ensued the accused seized the peon by the wrist, and attempted to get away. It was held that the accused did not commit this offence as he had acted in self-defence. Un. Cr. C. 605 of 1892.

A gesture or preparation made by a person who intends or knows that it is likely that some person present will apprehend therefrom that he is about to use criminal force is an assault, and an assault, when completed, becomes criminal force. S. 351 I. P. C.

Ingredients:—Making of any gesture or preparation by a person in the presence of another. (2) intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

Mere words do not amount to an assault but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or on the other hand, may prevent them from being

held to amount to an assault. A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault. There must be evidence to show that the accused was about to use criminal force to him then and there. 30 C. 97.

Where one of the accused hit a constable and the others surrounded the constable in a threatening manner, it was held that this finding was not sufficient to convict the others of of assault. 8 M. L. T. 118. 11 Cr. L. J. 483, 7 I. C. 416.

Intention is the gist of the offence. 3 L. B. R. 194.

S. 352 I. P. C:—Punishment for assault or criminal force otherwise than on grave provocation.

Evidence:—Prove (1) that the accused made a gesture or preparation to use criminal force. (2) that the same was made in the presence of the complainant. (3) that he intended, or knew, that it was likely that such gesture, etc., would cause complainant to apprehend that such criminal force would be used. (4) that such gesture, etc., did cause complainant to apprehend the same. (5) that the accused received no grave or sudden provocation from complainant.

A pleader who turned out a person who had trespassed into the pleader's room in a District Court, without, however, using violence did not thereby exceed his rights and no offence under S. 352 I. P. C., was committed. 15 B. L. R. 1039, 15 Cr. L. J. 14, 22 I. C. 158.

S. 353 I. P. C:—Assault or criminal force to deter public servant from discharge of his duties.

Evidence:—Prove (1) that the person assaulted, etc, was a public servant. (2) that the accused assaulted, or used criminal force to such public servant. (3) that when the accused assaulted etc., him, he was acting in the execution of his duty as such public servant; or that such assault, etc., was committed with intent to prevent or deter such public servant from discharging his duty, as such; or that such assault was

committed in consequence of something done, or attempted to be done, by such public servant in the lawful discharge of his duty.

"In the execution of his duty as such public servant." These words mean in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done in good faith under colour of his office. 18 A. 246, 28 C. 411. 414, 35 C. 361. 14 Cr. L. J. 512; 20 I. C. 992.

A vaccinator who vaccinates in a place where vacination is not compulsory is not discharging any duty under the law when attempting to vaccinate a child. A person, therefore, who prevents a vaccinator from vaccinating a child, in a place where vaccination has not been made compulsory, can not be said to be committing an offence under this section. 19 M. L. J. R. 238; 11 Cr. L. J. 200; 4 I. C. 1166.

A warrant of arrest was issued against R, on a charge of cheating, to the Sub-Inspector within whose jurisdiction R resided. That officer ordered his subordinates to be on the look out for R and arrest him wherever found. One of the constables came across R and proceeded to arrest him informing him of the issue of a warrant against him. The warrant itself was, however, not produced. The accused interfered with the constable in arresting R and managed to prevent his arrest. It was held that under S. 54 (1) Cr. P. C., the constable was empowered to make arrest without warrant as he had credible information that the person wanted had committed a cognizable offence and in making the arrest he was occupied in the discharge of his duty as a police officer and any interference with that arrest amounted to obstructing a police officer in the discharge of his duty and was an offence under this section. 33 A. 6, 41 C. 833. See also 11 A. L. J. 957; 15 Cr. L. J. 179; 22 I. C. 755.

If the act of the public servant is authorized by law any resistance will be deemed penal e. g., assaulting a public servant. 41 C. 836, 18 C. W. N. 548.

Defect in warrant is no defence. 1 Weir. 343, 344. 27 A. 491, 23 C. 896, 21 M. 295 contra 16 Cr. L. J. 589, 30 I. C. 141.

Where the accused resisted a public servant who attempted to search a house, in absence of the proper written order authorizing him to do so, he has committed no offence under this section. 1 C. W. N. 233. 16 Cr. L. J. 589, 30 I. C. 141. But search without a search warrant was held not to justify an obstruction or resistance to an officer, if he was acting in good faith and without malice. 19 M. 349, 21 M. 296, See also 41 C. 261.

To apply the section, the public servant must be acting in execution of his duty as such public servant, mere good faith will not do. 35 C. 361, 18 A. 246, 1 Cr. L. J. 442, 9 B 558.

Non-production of the warrant at the trial either by the production of the original or in the form of secondary evidence, it was held that the conviction was not good. 26 C. 63[illegible], 3 C. W. N. 605.

A Police Inspector searching the house of a person, suspected of having committed a theft was assaulted by his brother, held that the accused's brother being a suspect at the time of the attempted search, the search was not illegal and was justified under S. 95 and 165 Cr. P. C. The accused was therefore guilty of an offence under S. 353 I. P. C. 17 A. L. J. 115, 20 Cr. L. J. 174, 49 I. C. 494.

An assault made on a public servant acting under the orders of his superiors is punishable under S. 353 whether those orders were right or wrong. 14 Cr. L. J. 141, 18 I. C. 893, see also 9. M. L. T. 168, 11 Cr. L. J. 727, 8 I. C. 881.

An Amin who executes a warrant before the expiry of the time fixed by the Munsif for its return but after the time given by the Nazir, acts in the proper discharge of his duty within the meaning of S. 353 I. P. C., since he derives his authority to execute the warrant in virtue of his office from the Court and the fact that Nazir directs an earlier return, as a matter of office routine, does not affect the Amin's authority 75 I. C. 768, 25 Cr. L. J. 64.

A Police constable arresting a person without written order is not acting in the discharging of his duty and an assault on him is not an offence under S. 353 I. P. C. 20 Cr. L. J. 48, 48 I. C. 688. Where a constable arrested a person under a written order of a Sub-Inspector under S. 56 Cr. P. C and the accused pushed the constable aside and freed the person arrested, held that the accused was guilty under Ss. 353 and 225 I. P. C. 43 A. 283, 22 Cr. L. J. 210, 19 A. L. J. 196, 60 I. C. 322.

S. 354 I. P. C :—Assault or criminal force to woman with intent to outrage her modesty.

An indecent assault upon a woman is punishable under this section but if the intention goes further and is to gratify passion at all events, and in spite of all resistance, then such an assault will amount to an attempt to commit rape. 5 B. 403.

Evidence :—Prove (1) that the person assaulted, etc., was a female. (2) that the accused assaulted or used criminal force to her. (3) that he intended thereby to outrage her modesty ; or that he knew it to be likely that he would thereby outrage her modesty.

What constitutes an outrage to female modesty is nowhere defined. This will differ according to the country and the race to which the woman belongs.

Pulling of a woman by the arm coupled with a request for sexual intercourse amounts to an offence under this section. 1 Weir. 317. The accused took a girl of six years to his room and lay on her. Held, that the accused should be convicted of the offence under S. 354. 14 B. L. R. 961, 13 Cr. L. J. 858, 17 I. C. 794. Age of the woman is immaterial as a "woman" is defined in S. 10 I. P. C., as a female human being of any age. 15 B. L. R. 961. An offence of indecent assault on a woman can not be complete unless there is an intention or knowledge that the woman's modesty will be outraged. 14 Cr. L. J. 149, 19 I. C. 149.

The fact that a person is in love with a woman does not authorise him to pull that woman by her hand and hair in

the presence of others and such an act amounts to an outrage of a woman's modesty punishable under S. 354 I. P. C. 13 Cr. L. J. 58, 13 I C. 389. Where the accused is proved to have stripped a woman nearly naked and was lying upon her when her cries attracted people to the spot, he commits an offence under Ss. 376 and 511 and not merely under S. 354 I. P. C. 11 Cr. L J. 611, 8 I. C. 257. The accused took off a girl's clothes, threw her on ground and then sat down beside her. He said nothing to her nor did he do anything more. Held, that the accused committed an offence under S. 354 I. P. C., and not guilty of an attempt to commit rape. 13 Cr. L. J. 469, 15 I. C. 309.

S. 355 I. P. C :—Assault or criminal force with intent to dishonor person, otherwise than on grave provocation.

Evidence :—Prove (1) the assault or use of criminal force by the accused. (2) that the accused intended thereby to dishonour the person assaulted, etc., (3) that he did not receive grave or sudden provocation from the person so assaulted, etc.

The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insult, such as kicking a man, pulling a man's nose, assaulting with a shoe, or laying a whip across the shoulders.

Where an accused, while under trial, struck a Sub-Inspector of Police, who was in the witness-box giving evidence against him, it was held that he had committed an offence under this section. 27 A. W. N. 186.

S. 356 I. P. C :—Assault or criminal force in attempt to commit theft of property carried by a person.

Evidence :—Prove (1) the assault or use of criminal force by the accused. (2) that the person assaulted etc., at the time, was wearing, or carrying the property in question, (3) that the accused committed such assault, etc., in attempting to commit theft of such property.

This section applies to cases of using criminal force in an attempt to commit theft and not to those cases in which theft has been actually committed. 27 A. W. N. 186.

The section will generally apply to pickpockets.

S. 357 I. P. C:—Assault or criminal force in attempt wrongfully to confine a person.

Evidence:—Prove (1) the assault or use of criminal force by the accused. (2) that he did so in an attempt to wrongfully confine the person assaulted, etc.

S 358 I. P. C:—Assault or criminal force on grave provocation.

This section is a somewhat mitigated form of the offence described in S. 352 I. P. C.

Ss. 359 to 374 I. P. C:—

Kidnapping, Abduction, Salary and Forced Labour.

S. 359 I. P. C:—Kidnapping is of two kinds: Kidnapping from British India, (S. 360) and kidnapping from lawful guardianship (S. 361).

S 360 I. P. C:—Kidnapping from British India.

Evidence:—Prove (1) conveying of any person beyond the limits of British India. (2) such conveying must be without the consent of that person.

The consent must be either express or implied. Where the accused induced certain women to leave British India for Ceylon on the misrepresentation that they were to be married to his sons, and after arriving at Ceylon made them work as coolies on a tea estate, it was held that the women must be held to have been taken without their consent and that the accused was guilty of kidnapping from British India. 8 M. L. T. 91, 1910 M. W. N. 262.

S. 361 I. P. C:—Kidnapping from lawful guardianship. This offence may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown up person, therefore is not this offence. 6 W. R. 11.

Evidence:—Prove (1) taking or enticing away a minor or a person of unsound mind. (2) Such minor must be under fourteen years of age, if a male, or under sixteen years of age, if a female. (3) the taking or enticing must be out of the

keeping of the lawful guardian of such minor or person of unsound mind. (4) such taking or enticing must be without the consent of such guardian.

Kidnaping is an offence irrespective of any intent with which it is committed. It is immaterial whether the minor or the person of unsound mind consents or not. A mere leading of a willing child will be sufficient. The period of detention is immaterial to the offence.

'Taking' means physical taking. 15 Cr. L. J. 630, 25 I. C. 638.

Taking away in good faith is not kidnapping. 1 Weir 208.

"Out of the keeping of the lawful guardian."—'Keeping' is not the same thing as possession. 'Keeping' implies maintenance, protection, control, manifested not by continual action, but as may be necessary. It is compatible with independence of action and movement. Therefore, a minor who has gone out some distance for a walk, or to a fair, is always to be considered as in the keeping of the guardian. 'Lawful guardian' does not necessarily mean legal guardian; but the term includes any person lawfully entrusted with the care or custody of such minor or other person. A de facto guardian, therefore, whose guardianship is not against the wishes of the de jure guardian, is a lawful guardian. 10 I. C. 281. 12 Cr. L. J. 239.

Take or Entice :—Takes means removes bodily. Even the mere leading of a not unwilling child would amount to taking. Enticing—may be by deceit, or promise of a present or the inducements of a lover &c. But where a minor girl was driven away, out of the house, by her guardian, she ceases to be in the keeping of such guardian. Enticing need not be by means of force or fraud. 7. W. R. 62.

When 'taking is complete':—Calcutta, Allahabad and Punjab High court's view is that the offence of kidnapping is complete so soon as the minor is actually taken out of the cus-

tody of the guardian, the offence is not a continuing one and there can be no abetment of this offence but the Madras High court is of opinion that so long as the process of taking the minor out of the keep of his lawful guardian continued, the offence of kidnapping might be abetted. 1 M 173 see 27 C. 1041. 18 A. 350, 19 A 109, 38 A. 664, 26 A. 197, P. R. No. 25 of 1916 In 26 M. 454 the ruling in the Calcutta case (27 C. 1041) has been approved of.

There must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent.

"Lawful guardian" includes not only the parents or relation in whose house the minor lives and is brought up, but any other person with whom the minor resides by the consent, express or implied, of those who have higher legal rights. 7 P. R. 1911, it does not include a person gaining possession of the minor by an offence under this section. 7 P. R. 1911, 2 N. W. P. 286, 34 M. 284.

Under the Hindu Law the father is the guardian of his children and is ordinarily entitled to their custody, so if a mother removes a girl from her father's house for the express purpose of giving her in marriage without his consent, it will be an offence under this section. 8 C. 969, 8 P. R. 1878. The mother is the natural guardian of his children after the father, if father has not appointed any one else as guardian. 7 W. R. 74. Under the H. C though paternal uncles are preferential guardians to maternal uncles, where paternal uncles claim an adverse interest they are not entitled to the custody of the minor's person under provisions of Act VIII of 1890. 15 Cr. L. J. 640, 25 I. C. 840. The father and the mother only have the absolute right to the custody of a Hindu minor and no such right exists in the nearest male relation of the minor so as to be a defence to a charge of kidnapping a minor from a de facto guardian. 42 A. 146. Husband's relations are preferable guardians. 27 P. R. 1915.

The husband of a Hindu girl of fifteen is her lawful guardian, and the taking away of the minor wife, even by her own father is kidnapping. 17 C. 298.

Under Muhammadan Law the mother is the lawful guardian, if a father takes away a son under seven, or a daughter under puberty, if sunni, or under seven, if shiah, or illegitimate child from the custody of the mother, he commits an offence under this section. 11 C. 649, 8 A. 322, 2 W. R. 76, 2 A. 71. The mother is the natural guardian of her illegitimate children, 8 C. 971, and under the Sunni Law, of the minor daughter till she reaches puberty at the age of fifteen, 6 B. L. R. 536, 12 B. L. R. 891, even when the daughter is married. 32 C. 444, and attains puberty. 60 P. R. 1905. Even a divorced wife is entitled to the custody of her children. 6 B. L. R. 536 12 B. L. R. 891.

A husband becomes the guardian of his wife only after she attains puberty. 32 C. 444, 3 Cr. L. J. 328, 13 B. L. R. 160. To constitute a taking or enticing under the section, the consent of the minor is wholly immaterial, neither fraud nor force is required. 2 W. R. 5, 61, 16 W. R. 42.

Where a girl who was under the temporary guardianship of a person was taken away with his consent and married to a boy without the consent of her father, this offence was held to have been committed. Temporary guardianship does not oust lawful guardian's right. 24 M. 284.

The prosecution need not prove the guardianship in its strict legal acceptation. 8 C. 971, 4 C. 374.

The consent of the guardian given subsequent to the commission of the offence is not sufficient. 31 A. 448, 10 Cr. L. J. 295, 3 I. C. 480, 6 A. L. J. 682. Consent given on a misrepresentation is no consent. 36 M. 453. Where a minor is removed with the consent of the guardian and subsequently married improperly without the guardian's consent, such marriage would not itself amount to kidnapping. 36 M. 453, 15 Cr. L. J. 24, 22 I. C. 168.

Where a girl was ordered by her father to take food to the bullocks and as she was coming home she was persuaded by the accused to accompany him, it was taking out of the keeping of the lawful guardian. 40 A 507. Where a married woman under sixteen quarreling with her mother-in law left her husband's house but on her way she was induced by the accused to accompany him, the accused was guilty under this section. 14 A. L. J. 792, 16 Cr. L. J. 117, 27 I. C. 161.

Where, therefore, a girl runs away from home in consequence of ill-treatment, and on meeting the accused on the road, agrees to take service as a cooly and goes with him, this offence is not committed. 3 B. 178, see also 12 A. L. J. 265, 37 A 624, 1912 M. W. N. 538, 13 Cr. L. J. 598; 16 I. C. 165.

S. 362 I. P. C:—Abduction.

Abduction differs from kidnapping (1) The means employed in the former must be forcible or deceitful, in the latter they may be innocent. (2) The subject of abduction may be any person; the subject of kidnapping must be a minor or a person of unsound mind.

Abduction distinguished from kidnapping.

Evidence:—Prove (1) forceful compulsion or inducement by deceitful means. (2) the object of such compulsion or inducement must be the going of a person from any place.

The offence of abduction is a continuing offence. 12 A. L. J. 91, 15 Cr. L. J. 154; 511, 24 I. C. 599.

Abduction which does not amount to kidnapping is not punishable, unless it be done with one of the intents set forth in Ss. 364, to 367 and 369. If kidnapping is accompanied by any of these intentions, it is more severely punisable in consequence under the same sections.

Deceitful means, includes inducing woman by promise of marriage to leave her house followed by failure to marry her or get her married. 4 A. L. J. 482, 6 Cr. L. J. 9.

S. 363 I. P. C:—Punishment for kidnapping. This section specifies the punishment for the offence defined in Ss. 360 and 361 I. P. C.

Evidence:—Prove for kidnapping from British India (1) that the person in question was at the time of the offence in British India, (2) that the accused conveyed that person beyond the limits of British India, (3) that he did so without the consent of that person, or of some person legally authorised, to consent on that person's behalf.

Prove for kidnapping from guardianship, (1) that the person in question was at the time of the offence a minor under fourteen years of age (if a male), or under sixteen years of age (if a female); or that such person was of unsound mind. (2) that such minor, or person of unsound mind, was, at the time, lawfully entrusted to the keeping of a guardian. (3) that the accused took or enticed such minor, or person of unsound mind, out of such keeping. (4) that he so took or enticed, etc. without the consent of such guardian.

So long as the minor can at will take advantage of the guardianship and protection and place itself within the sphere of its operation, the relation between the minor and guardian implied by the word 'keeping' is not dissolved. 17 Cr. L. J. 235, 34 I. C. 652.

Although a minor (married girl) leaves her husband's home of her own accord, she does not cease to be under her husband's guardianship. 14 A. L. J. 792, 36 I. C. 580, 17 Cr. L. J. 532.

S. 364 I. P. C:—Kidnapping or abducting in order to murder.

Evidence:—Prove (1) the kidnapping by the accused. (2) that he so kidnapped the person in question in order (a) that such person might be murdered; or (b) that such person might be so disposed of, as to be put in danger of being murdered.

Or for abuction prove—(1) that the accused compelled the person to go from the place in question. (2) that he so compelled that person by means of force; or that he induced that person to do so by deceitful means. (3) that he so abducted the person in question in order (a) that such person might

be murdered, or (b) that such person might be so disposed of as to be put in danger of being murdered.

S. 365 I. P. C :—Kidnapping or abducting with intent secretly and wrongfully to confine person.

Evidence :—Prove (1) Kidnapping by the accused ; or abduction by him, (2) that the accused thereby intended that the person kidnapped or abducted should be kept in wrongful or secret confinement.

Where a person was abducted in order that he might be held to ransom his abductors, it was held that this section was applicable. 6 L. B. R. 160.

The accused abducted a girl B in order to put pressure upon her friends to restore another girl whom they had abducted. She was restored a few days after B was abducted and then B was also let go. It was not found that any harm was done to B. It was held that under such circumstances heavy sentences of imprisonment were not necessary. 1916 P. L. R. No. 89 of 1916. 17 Cr. L. J. 472 ; 36 I. C. 152.

S. 366 I. P. C :—Kidnapping or abducting woman to compel her marriage, etc.

Evidence :—Prove (1) kidnapping by the accused ; or abduction by him. (2) that the person so kidnapped or abducted is a woman. (3) that the accused then intended or knew that it was likely (a) that such woman might or would be compelled to marry a person against her will, or (b) that she might or would be forced or seduced to illicit intercourse.

An intention to seduce subsequent to the elopement is an essential part of this offence.

The words 'illicit intercourse' means merely sexual intercourse between a man and a woman who are not husband and wife. 27 A. W. N. 199, 1907 ; 6 Cr. L. J. 9.

Sheltering girls with a view to prostitute themselves is an offence under this section. 34 A. 340.

Presumption as to the knowledge or intent to abduct does not arise when the accused is a child of immature age. 17 Cr. L. J. 283, 34 I. C. 1003.

A person who compels a girl to go away from the place where her mother-in-law was, with intent to have sexual intercourse with her, commits on offence under Ss. 366 and 362 I. P. C 9 M. L. T. 406, 12 Cr. L. J. 240, 10 I. C. 290.

That the girl at the time of enticement had the intention of having illicit intercourse with the accused is no defence to a charge under the section. The intention of the accused and not that of the girl is the material matter in the case. 23 Cr. L. J. 379.

S. 366 A, I. P. C:—Abducting a minor girl under 18 years to force or seduce her to illicit intercourse with another person.

Evidence:—Prove (1) the means employed by the accused (2) that accused induced the girl (a) to go from any place or (b) to do any act, (3) that the girl was below 18 years of age (4) that accused intended or knew that it was likely (a) that she would be forced to illicit intercourse with another person or (b) that she would be seduced to illicit intercourse with another person.

S. 366 B. I. P. C:— Importing into British India from any country outside India a girl under 21 years to force or seduce her to illicit intercourse with another person or importing into British India from any state in India any such girl to force or seduce her to illicit intercourse by himself or another person.

Evidence:—If from any country outside British India Prove (1) that the girl is under 21 years (2) that accused imported her into British India from any country outside India (3) that accused knew or intended that it was likely (a) that she would be forced to illicit intercourse with another person or (b) that she would be seduced to illicit intercourse with another person.

If from any State in India Prove (1) that the girl is under 21 years (2) that accused imported her into British India from any State in India (3) that accused knew or intended that it was likely (a) that she would be forced to illicit intercourse with himself or another person or (b) that she would be seduced to illicit intercourse with himself or another person.

N. B:—The above two sections (366-A and 366-B) were newly added by Act XX of 1923 and were brought into force from 1—5—24, by the Government of India Notification Home Department No. F. 51, 11—1—22 Judicial dated 24—3—24.

S. 367 I. P. C :—Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Evidence :—Prove (1) kidnapping by the accused, or abduction by him. (2) that he so kidnapped or abducted the person in question (a) in order that such person might be subjected to grievous hurt slavery, etc , or to unnatural lust, etc., or (b) in order that such person might be so disposed of as to be put in danger thereof ; or (c) knowing it to be likely that such person would be so subjected or disposed of.

S. 368 I. P. C :—Wrongfully concealing or keeping in confinement kidnapped or abducted person.

Evidence :—Prove (1) that the person in question has been kidnapped or abducted. (2) that accused knew of such kidnapping or abduction, (3) that he, having such knowledge, wrongfully kept or concealed such person in confinement.

Prove also the intention or knowledge with which the accused concealed or kept such person in confinement; or prove the purpose for which he did so.

This section refers to some other party who assists in concealing any person who has been kidnapped and not to the kidnappers. 6 W. R. 17.

A girl under sixteen years of age with her widowed mother was going to a market in search of work. On her way she met another woman who asked the girl to accompany her

under a promise of obtaining work for her. The woman took the girl to her house and kept her there till evening, when she was removed by the accused in a closed carriage to a solitary bungalow far away from the town. The girl was kept there during two days and nights, after which she was permitted to return to her house. It was held that the accused had committed this offence. 6. B. L. R. 785.

S. 369 I. P. C :—Kidnapping or abducting child under ten years with intent to steal from its person.

Evidence :—Prove (1) the kidnapping by the accused; or abduction by him. (2) that the person kidnapped or abducted was a child under the age of ten years. (3) that the accused thereby intended to take moveable property from that child's person. (4) that such intention was dishonest.

The consent of the child kidnapped is immaterial.

S. 370 I. P. C :—Buying or disposing of any person as a slave.

Evidence :—Prove (1) that the accused imported, exported, etc., the person in question as a slave; or that the accused accepted, received or detained the person in question as a slave. (2) that he did so against the will of that person.

Slavery does not necessarily connote an absolute and unlimited power over life of another under S. 370 I. P. C., but falls short of it. 41 M. 334, 22 M. L. T. 262, 1917 M. W. N. 894, 33 M. L. J. 430, 6 L. W. 600, 19 Cr. L. J. 17, 42 I. C. 977.

S transfered to A for Rs. 25 his rights in the person of B, a girl of thirteen years. In a document in which the transaction was recorded, B was described as a vellati (slave girl) purchased by S from P. It was held that A was guilty of buying B as a slave. 7 M. 277 see also 2 A. 723.

S. 371 I. P. C :—Habitual dealing in slaves.

Evidence :—Prove (1) that the accused imported, exported, etc., slaves. (2) that he has done so habitually.

A slave dealer on land is punished under this section and a dealer on sea is treated as a pirate.

S. 372 I. P. C :—Selling minor for purposes of prostitution, etc.

Evidence :—Prove (1) that the minor in question was under eighteen years of age at the time of the offence. (2) that the accused sold, let to hire, or otherwise disposed of such child. (3) that he did so with intent that such minor should be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose ; or with knowledge that it was likely that such minor would be employed or used for any such purpose.

The question whether or not the disposal of the minor was effected with the intention or knowledge postulated by this section, is a question of fact which must be determined according to the circumstances of each case. 1 Weir. 359.

Performance of a Gejjee ceremony on a minor girl does not amount to her disposal within 372 I. P. C. 22 B. L. R. 894, 58 I. C. 145.

To constitute an offence under Ss. 372 and 373 I. P. C., there should be a making over of possession of the minor girl either by sale or hire or by a similar arrangement. The performance of the Kanyarikam ceremony by the accused which has the effect of an arrangement by which a person has sexual intercourse with a girl who had just attained puberty for three days, while the girl remained with her parents, does not render the accused guilty of the offences under Ss. 372 and 373 I. P. C. 85 M. L. J. 157, 24 M. L. T. 77, 1918 M. W. N. 484, 8 L. W. 258, 19 Cr. L. J. 965, 47 I. C. 865.

Dedication of a minor girl to a temple to serve the temple as a dancing girl amounts to disposal for purposes of prostitution, when it is shown that girls so dedicated have led that life. 2 M. W. N. 479, 12 Cr. L. J. 566, 12 I. C. 654. See also 1 weir. 359, 364; 15 M 75 ; 41 ; 323 ; 16 B. 737.

The taking of a minor girl by temple dasi, though unattended by ceremonies of adoption will raise a presumption of guilt under S. 372 throwing on the taker the onus of proving

absence of guilty knowledge or intention. S. 373 does not require proof, that the minor would necessarily be employed for purposes of prostitution; it is enough if such is the probable result. The section also does not require proof of intention to employ the minor for such purposes during her minority. 13 M. L. T. 131, 24 M. L. J. 211, 14 Cr. L. J. 33, 1913 M. W. N. 207, 18 I. C. 257.

The section is not inapplicable merely because minor concerned is of dancing girl class. 12 M 373, 8 B. L. R. 236;

Where a dancing girl adopted a daughter, it was held that she had committed no offence if the girl was to be brought up as a daughter, although the girl might have her choice of following the profession of prostitute or marrying; and that she would be guilty under the section, if the girl was adopted in order to follow the profession as a minor. 12 M 273, 13 M. L. T. 131, 1913 M. W. N. 207.

S. 373 I. P. C:—Buying minor for purposes of prostitution, etc.

Evidence:—Prove (1) that the minor in question was under eighteen years of age at the time of the offence. (2) that the accused bought, hired, or obtained possession of, such child. (3) that he did so with intent that such minor while under eighteen years of age would be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose; or with knowledge that it was likely that the minor while under the age of eighteen would be employed or used for any such purpose See 18 A 24, 20 A. W. N. 133.

Prostitution defined

The word 'prostitution' means, offering of the person for promiscuous sexual intercourse with men or the surrender of a girl's chastity for money. 5 M. H. C 473, 476.

The offence is complete so soon as the obtaining possession, of the minor is accomplished, with the requisite intention or knowledge, though the minor may never enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all. 18 A. 24. 1913 M. W. N. 207, 24 M. L. J. 211 contra 22 C 164. 19 M. 127, 135.

It is not necessary for the purpose of this section that the possession of the minor should be obtained from a third person. It is sufficient the possession is obtained with intent to use the minor for the purposes of prostitution. 45 B. 529, 22 B. L. R. 1234, 22 Cr. L. J. 29, 59 I. C. 141.

374 I. P. C:—Unlawful compulsory labour.

Evidence :—Prove (1) that the accused compelled the person in question to labour. (2) that such compulsion was unlawful. (3) that the accused did so against the will of that person.

Where the accused induced the complainants, whom he alleged, were indebted to him in various sums of money to consent to live on his premises and to work off their debts, and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that a conviction under this section could not be upheld. 19 C. 572.

A, a forest officer, impressed some carts for his use, under the executive orders of Government, which had not the force of law. A committed an offence under this section. 9 B 558.

Ss. 375 and 376. Rape.

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :— Rape defined.

First :—Against her will.

Secondly :—Without her consent.

Thirdly :—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly :—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man, to whom she is or believed herself to be lawfully married.

Fifthly :—With or without her consent, when she is under twelve years of age.

Explanation :—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception :—Sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape.

S. 376 I. P. C :—Punishment for rape.

Evidence :—Prove (1) that the accused had sexual intercourse with the woman in question. (2) that the act was done under circumstances falling under any of the five descriptions specified in S. 375 I. P. C. (3) that such woman was not the wife of the accused ; or, if she was his wife, she was under twelve years of age. (4) that there was penetration.

Consent, must be intelligent.

A consent given under fear of injury, or under a misconception of fact, or by a person who from unsoundness of mind or intoxication is unable to understand the nature and consequences of that to which he consents, or consent given by persons under twelve years of age, is not such a consent as is intended by any section of this code. S. 90 I. P. C. See also on page 6.

It was held that sexual intercourse with an idiot woman she being incapable of giving consent from defect of understanding is an offence under the section. 28 L. J. (M. C) 85. But there must be evidence that the connection was against the will or without the consent of the woman. 25 L. J. (M. C) 172.

The mere fact that a woman submits through fear, does not take the offence out of the category of rape. 1 W. R. 21.

A sleeping person can never consent. Where a man had connection with a woman while she was asleep, he was held to have committed rape. 12 Cox. 311, 14 Cox. 114.

If a girl does not resist intercourse in consequence of misapprehension, this will not amount to a consent on her part. 4 Cox. 220, 2 Q. B. D. 410.

A consent given after the act, and a consent given but withdrawn before the act, is wholly immaterial, nor does the cessation of a genuine resistance amount to a consent.

No offence of rape is committed when the sexual intercourse is with the consent of the woman. 12 Cr. L. J. 584, 12 I. C. 848.

Where a person is charged with the offence of having committed rape, the question for determination is whether the woman was or was not a consenting party, and in this connection her testimony without any independent evidence in support thereof that she was not a consenting party is insufficient for a conviction. The first and foremost circumstance that can be looked for in cases of this kind is the evidence of resistance which one would naturally expect from a woman unwilling to yield to sexual intercourse forced upon her. Such a resistance may lead to the tearing of cloths, the infliction of personal injuries and even injuries on her private parts. 75 I. C. 983, 25 Cr. L. J. 74.

Penetration defined.

Penetration :—Means an introduction of some portion of the male organ—the virile part—even in the labia of the woman's organ, is penetration, however slight it may be.

If the offence is incomplete for want of penetration, the accused may be convicted of an attempt to commit rape, if it is clear that he intended to accomplish the penetration in spite of all resistance. 5 B. 403. See also 1 weir. 383.

Otherwise he would be guilty of an indecent assault under S. 354 I. P. C. 13 Cr. L. J. 469.

Physical incapacity is a good defence.

A person physically incapable of committing rape cannot be held guilty of an attempt to commit it. 5 Un. Cr C. 865.

In a case of rape there was no direct reliable evidence as to the commission of the offence, no blood or semen was discovered on the body of the prosecutrix and there had been great delay in making the first information and there was enmity between the parties. All these circumstances combined

to raise doubt in favour of the accused to the benefit of which he is entitled. 17 Cr. L. J. 150, 33 I. C. 630.

A boy of 12 years, though incapable of committing rape may be guilty of an attempt to commit rape. 18 Cr. L. J. 943, 42 I. C. 175.

An inference adverse to the accused in a case of rape, should not be drawn from the fact that the complainant was very much ashamed and even committed suicide owing to the shame brought on her. 19 Cr. L. J. 155, 43 I. C. 443.

Can a man be guilty of rape with his own wife.

A man cannot be guilty of rape on his own wife when she is over the age of twelve years, on account of the matrimonial consent she has given which she cannot retract. But he has no right to enjoy her person without regard to the question of safety to her. 18 C. 49.

Special provisions with respect to offence of rape by a husband.

Cases of rape by a man with his own wife can be tried or committed for trial, only by a Chief Presidency Magistrate or District Magistrate. If these Magistrates deem it necessary to direct an investigation by a Police officer with respect to such an offence, no Police officer of a rank below that of Police-Inspector shall be employed either to make, or to take part in, the investigation. S. 561 Cr. P. C.

It was held that the fact that the investigation into the offence was made by an officer below the rank of a Police-Inspector was not a material irregularity which would vitiate subsequent proceedings. 1895 A. W. N. 9.

Admissibility of dying declaration on a charge of rape.

The Dying declaration of a deceased person is admissible in evidence on a charge of rape. 6. W. R. 75.

S. 377 I. P. C :—Unnatural offences.

Evidence :—Prove (1) that the accused had carnal intercourse with a man, woman or animal. (2) that such intercourse was against the order of nature. (3) that the accused did the act voluntarily. (4) that there was penetration.

A domestic fowl is held to be an 'animal'; and an attempt to commit an unnatural offence with such fowl will be Punishable under this section. 24 Q. B. D. 357, 59 L. J. (M. C) 47.

Both the party on whom the offence is committed and the agent must be of the age of discretion. Where a man committed sodomy with a boy of the age of twelve years, he was convicted of that offence, though the boy was discharged. 3 Cox. 270.

In a charge of offence under this section, it is as a rule unsafe to convict on the uncorroborated testimony of the person on whom the offence is said to have been committed unless for any special reasons that testimony is entitled to special weight. 19 Cr. L. J. 946, 47 I. C. 670.

Ss. 378—462 I. P. C.

Offences against property.

This class of offences falls into two groups, viz., Fraudulent offences, and Mischievous offences. The former group is dealt with in Ss. 378 to 424, and the latter in Ss. 425 to 462.

Things which are subjected to these offences are either immovables or movables. Unlawfully taking possession of an immovable thing is a civil wrong; and of the latter is a criminal wrong.

Things intimately connected with immovables, things affixed to and growing on land, as houses or portion thereof, trees and their fruit, growing grass and vegetables, and running or standing water; things in the possession of no one, such as the wild inhabitants of the earth, air, and water, and things abandoned are incapable of being the subject of criminal wrong.

Moveable property defined.

The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to any thing which is attached to the earth. S. 22 I. P. C. 27 M 531; 40 A. 119; 19 Cr. L. J. 174.

The definition in the penal code is restricted to corporeal property, it differs from the definitions given in the General Clauses Act (Act 1 of 1868 S. 2) and the Indian Registration Act (Act XVI of 1908 S. 3)., where "moveable property" include

standing timber, growing crops and grass, fruit upon and juice in trees, and property of every description.

The things attached to the land may become moveable property by severance from earth, and that the act of severance may of itself be theft. See 27 M. 531, 15 B. 702.

Earth and stones.

Cart-loads of earth (1), or stones (2), carried away from the land of another, are subjects of theft. A house cannot be the subject of theft, but there may be a theft of its materials (3). (1) 15 B. 702, (2) 27 M. 531, (3) 10 Bur. L. R. 356.

Salt.

A sale of trees belonging to others and not cut down at the time of sale does not constitute theft. 1 weir. 419.

Salt spontaneously formed on the surface of a swamp appropriated by Government (4 M. 228), or in a creek under the supervision of Government (1872 Un. Cr. C. 66) is a subject of theft; but not that which is formed on a swamp not guarded by Government. 1 weir. 417.

Human body.

A human body, whether living ordead, is notmoveable property. 25 A. 129.

Water.

Running water in irrigation channels can be a subject of theft. 13 Cr. L. J. 131, 13 I. C 819, 1912 M. W. N. 119, 11 M. L. T. 162. 35 C. 437 distinguished.

Animals.

In order to render an animal the subject of theft there must be a complete capture, the result of which is to reduce the animal completely into possession. Mere pursuit short of capture will not do.

The removal of animals grazing in open lands where the owner has driven them is theft. 4 B. L. R. 626. A person who steals cattle which are let loose by the owner with a view to their going to drink water at a river, commits theft. 1878 Un. Cr. C. 136. The illegal seizing of cattle and taking them to the pound is not theft. 10 C. W. N. 228n. A bull dedicated

to an idol and allowed to roam at large remains the property of the trustees of the temple, and can become the subject of theft. 11 M. 145. It is not theft when a bull is set at large in accordance with religious usage. 17 C. 852, 9 A. 348.

Fish in an ordinary open irrigation tank (1) or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel, (2) or in a public river or creek, the right of fishing in which has been let out, are not the subject of theft. (3) but fish taken at sea are in possession of the owner of the smack by which they are taken as soon as they are taken, are the subject of theft. (4) Similarly, fish in an enclosed tank which are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, are, therefore, the subject of theft. (4-*a*) The test of possession is, whether the fish could escape. If they are unable to escape, they become the subject of theft (5). But chanks are held to be the subject of theft as licenses to gather them are granted by the Sovereign. (6). Fish:—

(1) 24 M. 81, 1 weir. 384. (2) 15 C. 4' 2, (3) 15 C. 388, 5 M. 390. (4) 20 Cox. 204, (4-*a*) 10 B. 193, (5) 36 M. 472, 1914 M. W. N. 168, (6) 27 M. 551.

If the water in an open irregation tank has fallen to such an extent that both the supply and distribution channels are dry, the freedom of fish is circumscribed and the catching of such fish without the consent of Government would be theft. 36 M. 472.

A peacock tamed but not kept in confinement is the subject of theft. 17 A. W. N. 41. If pigeons are so far tame that they come home every night to roost in wooden boxes, hung on the outside of the house of their owner, and a party come in the night and steal them out of these boxes, this is theft. 4 C & P 131. Similarly, pigeons kept in an ordinary dove-cote, having liberty of ingress and egress at all times by means of holes at the top, may be the subject of theft. 5 Cox. 367. Partridges, hatched and reared by a common hen, while Birds.

they remain with her, and from their inablity to escape are practically under the dominion and in the power of the owner of the hen, may be subject of theft, though the hen is not confined in a coop or otherwise, but allowed to wander with her brood about the premises of her owner. 10 Cox. 23.

Carcass:—

Where a man buried the carcass of a bullock suspecting it to have been poisoned and another person dug it up and carried it a way, it was held that no theft was committed, because property as well as possession in it were abandoned. 4 M. H. C. App. 30.

Valuable security:—

The halves of currency bank notes, sent in a letter, are goods; and a person who steals them is indictable for theft. (1831) 4 C & P 535. Similarly, any valuable security may be the subject of theft. 1870 Cr. R. 1870, Un. Cr. C. 43. Unstamped document, (1) unregistered document, (2) a settlement of accounts in writing, though not signed by any person, and containing no promise to pay (2-a) a kabulayet, (3) a deed of divorce, (4) a hundi, (5) are valuable securities. (1) 7 M. H. C. App. 26, 12 M 148, (2) 25 C 207, (2-a) 2 M. H. C. 247, (3) A. W. N. 59, 6 W. R. Cr. 2, (4) 11 W. R. 15, (5) 1910 D. W. R. No. 15. A cancelled instrument, (1) a sanad purporting to confer a personal title, (2) A postal receipt for an insured parcel are not valuable securities, (3). (1) 1st Rep., S. 89. (2) 10 C 584, (3) 1912 P. L. R. No. 299. The term "valuable security" applies to the original document, and not to a copy.

The offences against property are (1) theft, Ss. 378—382, (2) extortion, Ss. 383–389, (3) robbery and dacoity, Ss. 390–402, (4) criminal misappropriation Ss. 403–404, (5) criminal breach of trust, Ss. 405–409, (6) receipt of stolen property Ss. 410–414, (7) cheating, Ss. 415–420, (8) fraudulent deeds and disposition of property, Ss. 421–424, (9) mischief, Ss. 425–440, (10) criminal trespass, 441–462.

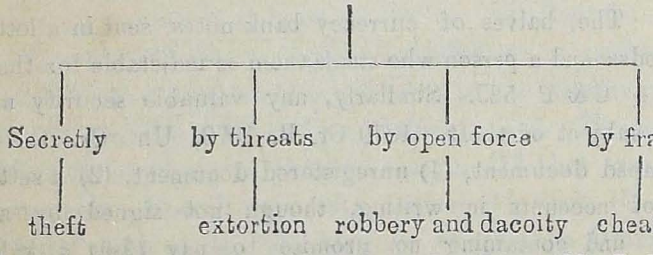
The principle of law is that only things moveable in the possession of some one can be misappropriated.

Stolen Property.

Property taken in the first, second, third, fourth, fifth is called "stolen property", the receiving or concealment of which is punishable under Ss. 410 to 414. Fraudulent transfers of property other than the above are punishable under Ss. 421 to 424 I. P. C.

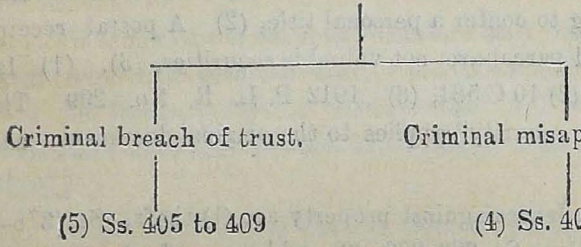
Property taken in the first, second, third, fourth, fifth and seven can be misappropriated either by removal or by non removal.

The ways in which "misappropriation" can be effected by removal.



(1) Ss. 372 to 382 (2) Ss. 383 to 389 (3) Ss. 390 to 402 (7) Ss. 415 to 420.

The ways in which "misappropriation" can be effected by non removal.



(5) Ss. 405 to 409 (4) Ss. 403, 404.

Theft.

S. 378 I. P. C:—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1:—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2:—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4:—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5:—The consent mentioned in the defini-. tion may be expressed or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Ingredients :—(1) Dishonest intention to take property (2) The property must be moveable. (3) It should be taken out of the possession of another person. (4) It should be taken without consent of that person. (5) There must be some removal of the property in order to accomplish the taking of it

Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another. 3 W. R. 2. 3.

Dishonestly.

Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing dishonestly. S. 24 I. P. C.

The word "intention" used in the section, has reference to the dominant motive without which the action would not have been taken. 2 B. L. R. 986, 25 B. 202. If a person pretends falsely to be the winner of a lottery and induces the lottery officials to pay the prize to him, he causes a 'wrongful gain to himself and acts 'dishonestly'. 15 Cr. L. J. 555, 24 I. C. 963.

Wrongful gain.

Is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss.

Is the loss by unlawful means of property to which the person losing it is legally entitled. S. 23 I. P. C.

Using a turban by the pledgee of it is not wrongful gain to him nor wrongful loss to the owner; to constitute wrongful loss or gain the property must be lost to the owner or he must be wrongfully kept out of it. 3 M. H. C. Ap. 6. Wrongfully kept out of any property means deprived of the benefit arising from the possession even temporarily and not keeping out of possession with the object of causing trouble or anxiety. 25 C. 416. Forcible and illegal seizure of bullocks of a widow in satisfaction of debt due by her husband, is a "wrongful loss" 5 W. R. 68., but not the illegal seizure and impounding of cattle even if maliciously made. 24 W. R. 7., and also not merely permitting cattle to stray. 1868 Un. Cr. C. 11. Snatching away a document lying beside the arbitrator preventing a witness from refering to an endorsement thereon does not cause "wrongful loss' or "wrongful gain". 3 M. 281. Breach of condition to sell a certain thing at a certain price after purchase does not constitute wrongful loss or wrongful gain to anyone. 22 W. R. 82.

Removal of property under a contested claim of right.

Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft. 16 W. R. 68, 28 M 304, 10 C. W. N. 233n, 44 C. 66. 20 C. W. N. 1270. 17 Cr. L. J. 465, 33 I. C. 136.

The claim to property must be proved by evidence to be fair and good. 15 W. R, 47, 16 W. R. 18. 75, 15 C. 390n 14 A. L. J. R. 399. See also 77 I C. 237. 25 Cr. L. J. 349.

A mere plea by an accused that the property, with the theft of which he is accused, is his own property, unsupported by proof or by some circumstances which tend to indicate that there is some truth in the statement is insufficient. 16 W. R. Cr. 18. 15 W. R. Cr. 47.

The mere fact that one who is in possession has no right is no ground for another to claim a right to the goods so possessed. 1 weir, 426, 431.

The claim must be one made in good faith, i. e., it must be honestly made, and if not so made, as where it is a mere pretence. 4 C. W. N. 480. Foll 9 C. W. N. 974, it will be of no avail. 27 C. 501. 16 Cr. L. J 458. 29 I. C. 90; 44 C. 66.

A valid claim of right in connection with theft is a claim of right to possession and a claim to some right in the thing taken is not a valid claim of right.

The court should not convict unless it is in a position to say that the claim is a mere pretence. 9 C. W. N. 974, 28 M. 304, 14 C. W. N. 408, 11 Cr. L. J. 248, 44 C. 66, 5 I. C. 794; 54 I. C. 992.

An accused was convicted for dishonestly carrying away the produce of a tamarind tree though the accused claimed ownership of the tree. Held, the conviction was bad as there was no clear finding as to the ownership of the accused or the possession of the complainant. 8 M. L. T. 118, 11 Cr. L. J. 483, 7 I. C. 416.

Where no dishonest intention can be attributed to the accused there can be no conviction for theft merely because the accused had removed the property. 8 Cr. L. J. 445 (M), 25 C. 416; 8 A. W. N. 97.

Before convicting a man of theft of the crops of some land it is necessary to find out who was in actual possession on that date. Mere order for delivery of possession is not conclusive. 17 Cr. L. J. 81, 32 I. C. 673. Where there is ground to suppose that accused may not have acted dishonestly, accused must be acquitted. 33 A 40, 13 A .L. J. 1058, 16 Cr. L. J. 812, 31 I. C. 828. Mere defence of acting under legal rights is not enough. If the court is satisfied of the bona-fides of the accused and that he acted without dishonesty, he should not be convicted. 14 A. L. J. 399, 17 Cr. L. J. 295, 35 I. C. 167. Where an order under S. 145 Cr. P. C., was made in favour of the complainant, but as a matter of fact the crops had been sown by the accused. Held, that the crops being the property of the accused, the cutting down of these crops by them could not constitute the offence of theft. 17 Cr. L. J. 75, 32 I. C. 667.

Master and servant.

A person plucking jack fruits in obedience to the orders of his employer from the trees standing on a plot, the right to share in the proceeds of which is desired to be asserted through the agent, is not guilty of theft, as no criminal dishonesty is proved. 18 Cr. L. J. 286, 38 I C. 318. A servant acting under the orders of his master cannot be convicted of theft in the absence of proof of his knowledge of his master's dishonest intentions. 15 C. W. N. 414, 12 Cr. L. J. 7, 69 I. C. 4.

Where a crop was dishonestly cut out and removed by the order of the accused, he himself being present, the accused is guilty of an offence under S. 379 I. P. C. 19 Cr. L. J. 116 43 I. C. 404

Possession explained

No definition is given in the code of the word "possession" though it is said that when property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession. S. 27 I. P. C.

That the property must be in the possession of some person is an essential condition. Theft is essentially an offence against possession. 'Possession' does not always imply ownership. Title to such property is immaterial for a consideration of the offence of theft. Possession is the consideration.

Possession is not affected by distance. Animals grazing miles away, or a person being away to a distant country, the house being locked up, would make no difference, when theft of such animals, or of property in such house, is the question.

A wife, clerk or servant has only custody of things belonging to the husband or master, but under the former's control. Things so situated are in the possession of the husband or master, and hence a dishonest taking of such things by a wife; 17 M 401, or servant 86 L. T. 600, or by any one else, 1 weir 419, even with the consent of the wife, clerk, or servant as the case may be, unless such consent is authorized is theft; 1 B. 610,

Actual touching or handling of chattel is not necessary in order to constitute seizure for distraint. Physical contact is not necessary to complete physical possession which depends on the physical possibility of the possessor dealing with the thing exclusively. 43 B. 550, 21 B. L. R. 251, 20 Cr. L. J. 391, 50 I. C. 999.

A joint cultivator removing crops jointly cultivated cannot be convicted of theft, as he must be deemed to have been in possession of the property. 10 A. L. J. 527, 14 Cr. L. J. 3, 18 I. C. 146.

Where there are several joint owners in joint possession, and any one of them dishonestly takes exclusive possession, he will be guilty of theft. 1 Weir. 403, 10 M. 186, Comp. 7 M. 557; 3 A. 181.

The removal of even the whole of the crop by a ryot in a zamindari holding on a varam tenure without delivering to the zamindar his share of the crop does not constitute theft. 13 M. L. J. 123, 26 M 481, 1914 M. W. N. 106; 483.

The removal by tenant of heaps of grain in his possession and control, is not a theft unless he actually delivers to the landlord only his share of the grain and not the whole. 1914 M. W. N. 106, 1 L. W. 178, 15 Cr. L. J. 186, 22 I. C. 762.

Removal of trees by tenant when in his possession is not theft though the landlord is jointly interested in them. 1914 M. W. N. 483, 15 Cr. L. J. 440, 24 I. C. 176.

Under a Kabuliyet it was provided that if the tenant would cut any trees he would pay to the landlord compensation at a certain rate. It was found that the tenant malafide cut some trees in order to injure the landlord. Held, that although the tenant was in possession of the land he committed theft by severing the trees from the ground, as they were in the possession of the landlord. 19 Cr. L. J 334, 44 I. C. 350.

It is theft, even if the intention is not to deprive the owner of the property permanently. Where a person snatched

away some books from a boy as he came out of school and told him that they would be returned when he came to his house, it was held that he had committed theft. 34 A 39; 8 A. L. J. 1237; 12 Cr. L. J. 530; 12 I. C. 844.

The tenant is entitled to exclusive possession till division of crop between himself and the landlord and a charge of theft against the landlord is maintainable. 20 C. W. N. 1212, 17 Cr. L. J. 473, 36 I. C. 153.

Where a carter removed from the godown of a railway company a bag filled with things pilfered from a number of bags consigned to others, the bag being in possession of the railway as bailees, taking it out of the godown, amounted to theft. 19 Cr. L. J. 884, 47 I. C. 80.

Where the owner is kept out of possession only with the object of causing him trouble in the sense of mere mental anxiety and with the ultimate intention of restoration of the property, it is not theft. 25 C. 416. Taking passenger's umbrella to make him pay fare, without any dishonest intention is not theft. 14 C. W. N. 933, 11 Cr. L. J. 444, see also 22 C 1017, 22 C 669 overruled, (1883) weir 246. Illegal seizure and impounding of cattle, even if maliciously effected with the intention of subjecting the owner to additional expense is not theft. 24 W. R. 7. Driving another's cattle to the pound with the object of sharing with the pound-keeper the fees to be paid for their release amounts to theft. 22 C. 139.

It is essential, under S. 378 I. P. C, that the removal is effected dishonestly. A removal, to compel the owner of the property to pay that which he is legally bound to pay is not a theft as there is no dishonest intention. 22 Cr. L. J. 673, 63 I. C. 609.

A person can be convicted of stealing his own property if he takes it dishonestly from another. But if there is no dishonest intention it will not be theft. Un. Cr. C. 343. Thus retaking of cattle unlawfully restrained will not amount to theft. 1 weir. 422.

It is sufficient, in a case of a theft of crops, to constitute an offence under S. 379 I. P. C., that the complainant sowed the crops and it is immaterial, that he had no title to cultivate the fields. 19 A. L. J. 961.

The mere cutting and removal of a crop under attachment do not constitute the offence of theft, without proof of dishonest intention, such intention is negatived where the removal was in order to save the crop from being wasted away. 1 Weir. 423.

It has been held that theft can be committed by the owner of a crop under attachment removing it. Here the attachment was by distraint made by a Revenue court, and the mode and effect of attachment by a civil court as regards possession was not considered. 1 Weir 420, 423.

Where a property is attached by an officer without a warrant for attachment and the accused removed the property: held, that there was no valid attachment and that the accused could not therefore be convicted for an offence under S. 379. I. P. C. 22 Cr. L. J. 107, 59 I. C. 411.

Where a judgment-debtor, whose standing crops were attached harvested them while the attachment was in force, it was held that he could not be convicted of theft but of offence under S. 424 and 403 I. P. C. 22 M. 151, 1 Weir 421, 16 M 364.

The dishonest intention to appropriate the property of another is common to both. But this intention, which in theft is sufficiently manifested by a moving of the property, must in the latter be carried into action by an actual misappropriation or conversion. In theft the offender takes property out of the possession of another person but in the latter the offender is already in possession of it; and is either lawfully in possession of it, because either he has found it or is a just owner of it, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion

of right in himself as of consent given by another. See ills-to S. 403 I. P. C.

In theft the removal must be with a dishonest purpose i. e., with the intention of causing wrongful gain to one person or wrongful loss to another person but in mischief the intention must be only to cause wrongful loss vide S. 425 I. P. C.

S. 379 I. P. C :—Punishment for theft.

Prove (1) that the property in question is moveable property (2) that such property was in possession of a person. (3) that the accused moved such property whilst in the possession of that person. (4) that he did so without the consent of that person. (5) that he did so in order to take the same out of the possession of that person. (6) that he did so with intent to cause wrongful gain to himself or wrongful loss to that person.

The movement may be direct or indirect.

A direct movement may be effected by actually moving the thing, or by removing an obstacle, which prevented its movement. An indirect movement occurs where something is moved in consequence of a direct movement applied to something else.

By movement it does not mean, that the whole of the thing should be moved from the whole of the space which it occupied.

Thus to take an article from a box and put it on the floor, to draw a thing from the bottom of a pocket to the edge or one inch out of it or to draw a pint of beer from a cask are all sufficient movements of the thing in question.

Taking out of a property from another person's possession, is without consent when the taking of the property is effected by taking advantage of a mistake of a owner which the taker knew to be such at the time it was made.

The removal of the property constitutes theft if his intention to take without the owner's valid consent being dishonest.

If the mistake on the owner's part is not known to the person who takes away the property then he is not guilty, as dishonest intention is essential. 1 A. L. J. 508.

If subsequently, the taker discovers the mistake, and nevertheless dishonestly keeps the property and appropriates the same, it is not theft but it may constitute Criminal Misappropriation. S. 403 I. P. C.

If a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft because there is no dishonest intention, even though he may cause wrongful loss. 15 B. 344 Foll Rat. Un. Cr. 908; 4 B. L. R. 438.

Husband and wife.

Hindu Law :—There is no presumption of law that a husband and wife constitute one personin India forthe purpose of criminal law. The wife, who removes her husband's property from his house, with dishonest intention, is guilty of theft. 17 M. 401. A Hindu woman who removes from the possession of her husband, and without his consent, her Palla, or Stridhanam, cannot be convicted of theft. 8 B. H. Cr. 11.

So also a husband cannot be convicted of robbing his wife, the wife being completely under the control of her husband. But he can be convicted if he steals his wife's stridhanam which is her absolute property.

The proposition that every thing acquired by a woman during coverture is the property of her husband has no foundation in Hindu Law. 3 M. H. C. 272.

Mahomedan Law :—It is laid down that a Mahomedan wife may be convicted of stealing from her husband; because under the system of law, there does not exist the same union of interest between a husband and wife which exists between an English husband and wife. 6 B. H. C. Cr. 9. The same reasoning would apply in the case of a Mahomedan husband.

Compulsion and necessity :—Where a man in extreme want of food or clothing steals either in order to relieve his

present necessities the law allows no such excuse to be considered. No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in S. 94 I. P. C.

It is absolutely necessary for the prosecution to establish the identification of the stolen property and if it was suspicious the benefit of doubt should be given to the accused. 16 Cr. L. J. 440, 29 I. C. 72.

The offence of theft is committed if the property is removed from the custody of the owner without his consent whatever may be the motive of the act and the fact that the owner receives compensation does not affect the character of the offence. 9 Cr. L. J. 389, 1 I. C. 800.

Moveable property can be sold in execution of a sentence of fine although the sentence directs that in default of payment the offender shall be imprisoned. S. 386 Cr. P. C. Moveable property may be attached and sold in satisfaction of a forfeited bond. S. 514 Cr. P. C. When an inquiry (42 M. 9, 26 B. 552, (39 I. C. 309), or trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. 41 M. 644, S. 517 Cr. P. C.

S. 380 I. P. C:—Theft in dwelling house, &c.

Evidence:—Prove the same points as for S. 379 I. P. C., and further — (7) that such property was at the time of the theft in a building, tent, or vessel. All that is necessary is that the property should be under the protection of the building; it is not necessary to show unlawful entrances into the building. 24 W. R. 49.

Building.

It Means a permanent edifice of some kind, however simple, as contrasted with a merely temporary erection, such as a booth or tent erected at a fair or market.

It denotes any thing made for the conveyance by water of human beings or of property. S. 48 I. P. C. 1 Weir. 436.

Theft from a verandah (1), or the roof of the house (2), or a brakevan (3), or a railway carriage (4), is not theft in a building (1) 1 Weir 435 contra P. R. No. 1 of 1881. (2) 1 Weir 435, Pro. M. H. C. 17th March 1866. (3) 1 Weir. 436, (4) 1 Weir 436, 23 A. 306. A theft from a railway carriage, when it was at a railway station, was held to be theft in a building though a railway carriage was not a building, the railway station was. 1886 Cr R. No. 36. An entrance half surrounded by a wall in which there were two door-ways but without doors, which was used for custody of property, is held to be building. P. R. No. 35 of 1879, 2 A. W. N. 224. Land surrounded not by a wall or fence of any kind is not a building 6 Cr. L. J. 134. R. 4 L. B. R. 24. A courtyard (1), is, but a compound (2) is not, a building. (1) 2 A. W. N. 224, 1889 Un. Cr. C. 484 (2) 6 Cr. L. J. 134.

A cattle shed is a building used for the custody of property. Pro. M.H. C. 24th November 1866.

The essential point in the offence is that the property should be under the protection of a building. 21 W. R. Cr. 49. There is nothing in the section which prevents a person from being convicted under the section for a theft committed by him in his own house.

S. 381 I. P. C.:—Theft by clerk or servant of property in the possession of master.

Evidence:—Prove the same points as for S. 379 I. P. C.; and further (7) that the accused was at the time a clerk, or a servant or was employed in such capacity by the person in whose possession the stolen property was.

A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of S. 27 I. P. C. Exp.

Is "a person bound either by an express contract of service or by conduct implying such a contract, to obey the orders and to submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact." A clerk or servant.

A man may be a clerk or servant, although

(1) he was appointed or elected to the employment in respect of which he is a clerk or servant by some person other than the master whose orders he is bound to obey; (2) he is paid for his services by a commission, or a share in the profits of a business; (3) he is a director of the company which he serves; (4) he is a clerk or servant of more masters than one, e.g., the clerk or servant of a firm is the servant of the several partners, and therefore of each of them; (5) he acts as clerk or servant only occasionally, or only on the particular occasion on which his offence is committed.

An apprentice paid, or unpaid, a rate collecter, and an assistant overseer are servants of their employers. But a hired boatman, a driver of a carriage hired for the day, or a person collecting money at Church services is not.

A person engaged to cart tamarind fruits from the forest, abstracted a portion of it, it was held that he was not the less a servant because his employment was temporary. 1 Weir 437. A hired boatman is held not to be servant. 8 W. R. 32. In the absence of evidence as to ownership of stolen property the conviction under S. 331 I. P. C., cannot stand. 16 Cr. L. J. 640, 30 I. C. 464.

S. 382 I. P. C:—Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

Evidence :—Prove the same points as for S. 379; and further (7) that the accused, when committing such theft, made preparations for causing death, hurt, or restraint or fear of death, hurt, or restraint. (8) that he did as above in order

(a) to the committing of such theft; or (b) to effect his escape after having committed such theft; or (c) to retain property taken by such theft.

The guilty preparation is the essence of this offence for if hurt is attempted or inflicted the theft amounts to Robbery. 6 W. R. 85. When A dropped the rice bag which he has stolen before stabbing B, he could not have caused the hurt for the purpose of carrying away the rice, the offence was not robbery but one under this section and S. 324. 4. L. B. R. 147. The mere possession of knives or big sticks, which if used might cause death or hurt, is not sufficient evidence of preparation. 1 Cr. L. J. 378, 10 Bur. L. R. 87. In offences under this section the thief is full of preparation to cause hurt but he may not cause it. In order to sustain a conviction under the section, actual theft must have been committe. 25 Cr. L. J. 386; 77 I. C. 434.

Extortion.

S. 383 I. P. C:—Extortion.

Ingredients:—(1) Putting a person in fear of injury to himself or another, (2) that such act was intentional; (3) that delivery of property took place; and (4) that this was done dishonestly.

S. 384 I. P. C:—Punishment for extortion.

Evidence:—Prove (1) that the accused put the complainant in fear of some injury. (2) that such injury was either to the complainant or to some other person. (3) that the accused did so intentionally. (4) that he thereby induced the person so put in fear to deliver to some person some property or valuable security, or something signed or sealed, which can be converted into a valuable security. (5) that the accused acted dishonestly in doing as said above.

Extortion and theft distinguished.

In extortion the consent is obtained by putting the person in possession of property in fear of injury to him or to any other whereas in theft the offender's intenton is always to take without that person's consent. In extortion the property is not limited to moveable property, an immoveable property may be the subject of extortion.

A threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough. A terror of a criminal charge, whether true or false, amounts to a fear of injury. 7 W. R. 28.

Extortion and robbery ditinguished.

Delivery by the person put in fear is essential. Where a person through fear offers no resistance to the carrying of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery and not extortion. 5 W. R. 19. It is also not necessary that the threat should be used, and the property received, by one and the same individual. 2 B. H. C. 394. A threat by a vakil of withholding further services unless an additional fee is paid is not a threat of an injury, and therefore is not extortion. 1 weir. 438, 5 M. H. C. R App. 14. Similarly a mere issue of an order to collect statistical information by a Police officer (1), a refusal to allow people to carry away firewood collected in a Government forest without payment of proper fees; (2) a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused (3) (1) 4 W. R. 5; (2) 3 B. H. C. Cr. 45; (3) 1 weir 438, 440.

S. 384 I. P. C., demands that the complainant should be put in fear of injury with the object of inducing payment of money from him. 15 A. L. J. 127, 18 Cr. L. J. 317, 38 I. C. 429.

In the case of extortion approximate amounts extorted from each and the nature of extortion should be stated. If the accused comes to know at the close of the evidence, the charge alleged against him, it is an irregularity fatal to the trial. 17 Cr. L. J. 411, 35 I. C. 971.

The threat of a criminal charge for the purpose of extracting money not legally due, is a threat of injury within S. 383 I. P. C. 14 Cr. L. J. 413, 20 I. C. 237.

S. 385 I. P. C:—Putting person in fear of injury in order to commit extortion.

Evidence :—Prove (1) that the accused put the complainant in fear, or attempted to put him in fear. (2) that the fear was regarding some injury. (3) that the accused did as above to commit extortion.

In S. 384 I. P. C., the offence consists of two parts : (1) causing fear of injury, (2) which induces the person labouring under the fear to deliver up the property, but under S. 385 I. P. C., only the first part of the offence is committed.

The court must be satisfied that the putting in fear is with the intention of extorting a delivery of property. M & M 347.

S. 386 I. P. C :—Extortion by putting a person in fear of death or grievous hurt.

Evidence :—Prove the same points as required for S. 384 but prove in the first point that the fear was of death or of grievous hurt.

S. 387 I. P. C :—Putting person in fear of death or of grievous hurt, in order to commit extortion.

Evidence :—Prove that the accused put or attempted to put the complainant in fear of death or of grievous hurt to him or to some other person in order to commit extortion.

The feigning of an attempt to commit suicide in order to extort money is an offence under this section.

S. 388 I. P. C :—Extortion by threat of accusation of an offence punishable with death, or transporation, &c.

Evidence :—Prove the same points as required for S. 384 I. P. C. showing that the fear was occasioned by a threat of an accusation of having committed or having attempted to commit, or induced some one else to commit, an offence punishable with death or with transportation for life, or ten years' imprisonment, or unnatural offence.

It is immaterial whether the person against whom the accusation is threatened be innocent or guilty if the prisoner intended to extort money.

S. 389 I. P. C:—Putting person in fear of accusation of offence in order to commit extortion.

Evidence:—Prove (1) that the accused put or attempted to put a person in fear. (2) that the fear was of an accusation of an offence, or an attempt to commit it. (3) that such offence was punishable with death, transportation for life, or imprisonment for at least ten years. (4) that he did so in order to commit extortion. For the last provision, prove further that the accusation was of an unnatural offence.

S. 390 I. P. C:—Robbery. Robbery.

Consists of either

Aggravated theft	or	Aggravated extortion
(1) i. e., where the offender in order to commit the theft, (2) or in committing the theft, (3) or in carrying away the stolen property, (4) or in attempting to carry it away, voluntarily causes, or attempts to cause, to any person, death, hurt or wrongful restraint, or fear of instant death, hurt or wrongful restraint.		(1) i. e., where at the time of extortion (2) the offender is in the presence of the person put in fear, (3) and puts him in fear of instant death, hurt or wrongful restraint to himself or any other person, (4) thereby inducing him then and there to deliver up the thing extorted.
Where the property is taken under the above circumstances, the theft becomes robbery.		Where the owner is induced under the above circumstances to deliver up the property, the extortion becomes robbery.

The use of violence will not convert theft into robbery unless it be used for one or other of the four ends specified in the section. An accidental infliction of hurt by a thief will not When use of violence will not convert theft into robbery.

convert theft into robbery. See 1 weir. 442. The chief distinguishing element in robbery is the presence of imminent fear or violence. When hurt or fear of instant hurt is caused by five or more persons for the purpose of dispossessing persons already in possession of some premises and has no relation to the commission of theft, although theft may have been committed at the same time as a perfectly independent act, it does not amount to robbery. 5 C. W. N. 372, Foll 38 I. C. 730, 18 Cr. L. J. 316. The person need not be the one from whose possession the thing is taken.

Robbery is the committing of one or the other of the wrongful acts mentioned in S. 390 for the purpose of committing of theft or for the carrying away or attempting to carry away property obtained by theft and so a thief is not guilty of it when he uses violence against his pursuers after abandoning the stolen property. 19 Cr. L. J. 27. 42 I. C. 987.

Dacoity.

S. 391 I. P. C :—Dacoity.

Dacoity is robbery committed by five or more persons. Abettors who are present and who help when the crime is committed are counted in the number.

S. 392 I. P. C :—Punishment for robbery.

Evidence :—Prove (1) that the accused committed theft. (2) that he caused or attempted to cause to some person (a) death, hurt or wrongful restraint; or (b) fear of instant death, of instant hurt, or of instant wrongful restraint. (3) that he did as above (a) in committing such theft; or (b) in order to commit such theft; or (c) in carrying away, or attempting to carry away, the property obtained by such theft. (4) that he acted as in (2) voluntarily. Or prove.

(1) that the accused committed extortion. (2) that he was, at the time of committing it, in the presence of the person put in fear. (3) that he committed it by putting that person or some other person in fear of instant death, or of instant hurt, or of instant wrongful restraint. (4) that thereby he induced the person so put in fear to deliver up then and there the thing extorted.

S. 393 I. P. C :—Attempt to commit robbery.

Evidence :—Prove that the accused attempted to commit robbery and also the points requiring to be proved for robbery. See S. 392 I. P. C.

S. 394 I. P. C :—Voluntarily causing hurt in committing robbery.

Evidence :—Prove (1) that the accused, or some one jointly concerned with him, committed or attempted to commit robbery. (2) that the accused, or such other person, voluntarily caused hurt in doing so.

S. 395 I. P. C :—Punishment for dacoity.

Evidence :—Prove (1) that robbery was committed or attempted. (2) that five or more persons committed or attempted to commit robbery; or that the whole number of persons committing, or attempting to commit robbery, was five or more. (3) that such persons were acting conjointly.

An attempt to commit dacoity should be charged under this section and not under S. 511, since it is comprised in the definition of dacoity. 7 W. R. Cr. 41.

Where in the first report, only two dacoits are alleged to have been recognised at the time of commission of dacoity, subsequent evidence that they were all identified cannot be relied upon unless strongly corroborated. 16 Cr. L. J. 204, 27 I. C. 764. Where the identification evidence regarding the accused is not reliable they could not be convicted of any offence. 11 Cr. L. J. 598, 8 I. C. 239.

Dacoity cases require great caution with reference to the evidence as to identification of dacoits. 18 Cr. L. J. 456, 39 I. C. 296. The mere fact that a person accused of dacoity made incriminating statements about himself before several prosecution witnesses and even produced some of the stolen articles, is not convincing or conclusive of his guilt. 14 Cr. L. J. 601, 21 I. C. 473. Where the sole evidence of a person charged with dacoity was that he had pointed out the place where some of

the stolen property was found, the evidence is not sufficient as it did not exclude other theories compatible with his innocence. 15 Cr. L. J. 404, 23 I. C. 1004. Mere association with persons who are afterwards proved to have participated in a dacoity may create suspicion, but is not proof of the fact that the person so associating took part in the dacoity. 19 Cr. L. J. 79, 43 I .C. 111. When a prisoner is apprehended eight days after a dacoity with part of the plunder in his possession, there is a good ground for charging him with the dacoity, or as having received or retained with guilty knowledge the property and he ought to be charged in the alternative form. 5 W. R. 66. When persons are found, within six hours of the commission of a dacoity, with portions of the plundered property in their possession, the presumption of law is, that they are participators in the dacoity. 3 W. R. 10.

To constitute the offence of dacoity, it is necessary to prove that the common object of the unlawful assembly was to commit dacoity or to cause hurt for the purpose of committing theft. 77 I. C. 444; 25 Cr. L. J. 396.

S. 396 I. P. C :—Dacoity with murder.

Evidence :—Prove (1) the commission of dacoity (2) that one of the accused committed murder. (3) that the murder was committed during the commission of dacoity.

If commission of dacoity was not the object of the accused there would be no conviction under this section. 6. C. W. N. 72. Distd 16 Cr. L. J. 759 of 31 I. C. 359 Foll 36 C 659; 38 I. C. 730. When out of a number of persons charged with having committed a dacoity half are acquitted, the charge of dacoity does not necessarily fail. 15 C. W. N. 434, 12 Cr. L. J. 193, 10 I. C. 684. A murder committed by a member of a gang of dacoits while carrying away the stolen property is murder committed in the commission of dacoity within S. 396 I. P. C., and all members of the gang are liable to the punishment provided by that section. 22 Cr. L. J. 687, 63 I. C. 623.

S. 397 I. P. C:—Robbery or dacoity, with attempt to cause death or grievous hurt.

Evidence:—Prove (1) the commission of robbery; or dacoity. (2) that the accused used a deadly weapon; or caused grievous hurt; or attempted to cause death or grievous hurt. (3) that the above acts were done during the commission of robbery or dacoity.

Where, in a case of robbery, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction must be under this section of "voluntarily causing grievous hurt in the commission of robbery. 6 W. R. 16. The use of the violence referred to in escaping after attempting a robbery does not fall within the section. 23 A 78, 3 Cr. L. J. 294. The liability to an enhanced punishment is limited to the offender who actually causes grievous hurt or uses a deadly weapon, and not to the case of persons associated with such offender in one offence. 1 Weir 459, 3 L. B. R. 121, 28 A 404, 19 A. W. 1. 186. Contra 21 A 263. There can be no conviction of a robber under the section simply on the ground that one of his associates carried a deadly weapon, 14 Cr. L. J. 432, 20 I. C. 416, 7 L. B. R. 26.

Deadly weapon.

The words 'uses a deadly weapon' in S. 397 include the carrying of a weapon for overawing the person robbed. To secure a conviction under this section either theweapon the accused had must be deadly or the hurt caused must be grievous. 13 Cr. L. J. 267, 14 I. C. 651. 6 L. B. R. 41. A Lathi cannot be described as a deadly weapon within the meaning of S. 397 I. P. C., 13 Cr. L. J. 182, 13 I. C. 998. Contra 2 Cr. L. J 746. The highest punishment under the section can be inflicted only on the offender who actually uses a deadly weapon, or causes death or grievous hurt. S. 34 cannot be applied to other offenders to make them liable to enhanced punishment. 22 Cr. L. J. 593; 10 L. B. R. 269; 62 I. C. 865.

S. 398 I. P. C:—Attempt to commit robbery or dacoity when armed with deadly weapon.

Evidence :—Prove (1) the attempt to commit robbery or dacoity, (2) that the accused was armed with a deadly weapon. (3) that he was so armed when the robbery or dacoity was committed.

The use of a deadly weapon falls under S. 397; the mere possession of such falls under this section. It is the terror naturally created by the possession of a deadly weapon that has been considered by the Legislature in this section.

Only those that actually carry arms are liable. One man cannot be made liable under this section because some of his associates were so armed. Ratanlal 797.

S. 399 I. P. C:—Making preparation to commit dacoity.

N. B :—In addition to this section, Ss. 122 (preparation to wage war against the King) and S. 126 (preparation to commit depredation on territories or power at peace with the King) make a mere preparation penal. Preparation to commit robbery or house-breaking is not an offence. 1868 P. R. No. 18.

Evidence.—Prove (1) that the act of the accused amounted to preparation. (2) that it was preparation to commit dacoity.

A mere assembly without further preparation is not a "preparation" within the meaning of this section. For if it were, S. 402 would be redundant. 41 C 350, 15 Cr. L. J. 385; 23 I. C. 985; 18 C. W. N. 498.

Preparation defined.

The 'preparation' should be shown to the satisfaction of the court by some act, such as the collection of men, arms, provisions, &c., which coupled with other circumstances plainly manifest the intention to commit dacoity. M & M 357. See also 178 L. J. 280; 34 I. C. 1,000.

Mere discussing the possibilities of committing dacoity and various suggestions to loot several places without evidence that accused assembled for committing a dacoity or for prepa-

ration; do not make the persons liable under S. 399 or 402. 17 Cr. L. J. 97. 32 I. C. 833.

The onus is on prosecution under S 399 to show that there was an intent to commit dacoity or that there was any step towards committing it. 17 B. L. R. 906, 16 Cr. L. J. 745, 31 I. C. 345.

S. 400 I. P. C :—Punishment for belonging to gang of dacoits.

Evidence :—Prove (1) that the accused belonged to the gang in question. (2) that such gang was associated for the purpose of habitually committing dacoity. 1 C. W. N. 146, Foll. 27 C 139, 23 W. R. 18, 6 A. W. N. 65.

The word 'belong' implies here something more than the idea of casual association. 11 Cr. L. J. 551, 7 I. C. 1006; 19 A. L. J. 725; 22 Cr. L. J. 663; 63 I. C. 455.

The act of associating and the purpose of the association may be proved by direct evidence or by proof of facts from which they can be reasonably inferred. Evidence that the accused or groups of them had been concerned in a large number of dacoities in a comparative short space of time may be sufficient evidence of such association. 32 M 179, 5 M. L. T. 100, 9 Cr. L. J. 567, 21 I. C. 307. It is not sufficient to prove simply that the accused gave shelter and assistance to dacoits. 1 B. L. R. 156, 11 Cr. L. J. 554, 7 I. C. 1012.

A mere fact that women lived as wives or mistresses with men who were dacoits would not make them liable. 12 Cr. L. J. 204, 10 I. C. 23, Rat. 863. The association of the accused with the gang need not be for the entire period of the existence of the gang. Even a recent recruit would be liable. 1 Cr. L. J. 920, 1 C. W. N. 142, 10 I. C. 833.

As to what would amount to "habitual committing of dacoity," see 19 C 190, 11 Cr. L. J. 364, 6 I. C. 492, 23 W. R. 18, 32 M. 179, 5 M. L. T. 100, 9 Cr. L. J. 567, 5 I. C. 3077.

The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs, where the prosecution is under this section. 13 Cr. L. J. 39; 13 I. C. 279; 16 C. W N. 69.

Previous convictions of the accused for dacoity along with other dacoits is relevant against him under Expl. 2 of S. 14 I. E. A., but the propriety of the conviction of the accused must be judged exclusively by reference to the evidence adduced by the prosecution at the trial. 1910 P. L. R. No. 18.

In cases where other evidence has established association for the purpose of habitually committing theft, evidence of previous convictions whether for offences against property or for bad livelihood is admissible to prove not the bad character but habit and for such purpose evidence of convictions for bad livelihood is more valuable. 38 C 408, 16 C. W. N 69, 15 C. W. N. 461, 13 Cr. L. J. 39; 12, Cr. L. J. 97, 13 I. C. 279, 9 I. C. 555, where 27 C 139 is doubted and 1 C. W. N. 146, followed.

When persons are charged with belonging to a gang associated for purposes of habitually committing offences, the only direct evidence that can be tendered is that of accomplices. Other witnesses can testify to association on certain isolated occasions, but the man who gives evidence of habitual association for a particular purpose must almost inevitably be an accomplice. 24 Cr. L. J. 696, 73 I. C. 808.

S. 401 I. P. C :—Punishment for belonging to gang of thieves or robbers.

Evidence :—Prove (1) that the accused belonged to the gang in question. (2) that such gang was associated for the purpose of habitually committing theft or robbery. 6 M. H. C. 120, 27 C 139, 142.

It is essential to prove that the association was for the habitual commission of theft or robbery and it should be clearly made out. 6 A. W. N. 16, (3) that theft or robbery was to be committed habitually; and (4) that the accused was a member of such gang.

In a trial under the section the following facts were proved (1) that the accused were seen together at mid-night in a certain place with implements of house-breaking on a certain night; (2) that some of them were seen together in different places where house-breaking and theft were immediately afterwards committed; and (3) that they had been each convicted at different times of theft, &c. It was held that the above circumstances were not sufficient proof of the association and of the association being for the habitual committing of theft which are required to be established to support a charge under this section. 1 Weir 452, see also 17 W. R. 50 and 12 Cr. L. J. 204.

Habit has to be proved by an aggregate of facts. Ratanlal 418.

The association and the purpose of the association may be proved by evidence, such as that the accused or the accused and others met and determined to join together for the purpose of habitually committing theft or robbery. In the absence of direct evidence, the association and the purpose of the association may be established by proof of acts from which these may reasonably be inferred. The commission of a large number of thefts by the accused within a comparatively short time gives rise to an inference that they must have been associated for the purpose of habitually committing theft. 24 Cr. L. J. 703, 73 I. C. 815.

The possession of stolen property by the gang and the fact that the district they recently visited was until they visited, free from petty crime are relevent facts. 1 Cr. L. J. 690. 7 O. C. 163.

Evidence:—That each member of the gang is a convicted thief is relevant. 14 B. L. R. 373, 13 Cr. L. J. 539. 15 I. C. 811.

S. 402 I. P. C:—Assembling for purpose of committing dacoity.

Evidence:—Prove (1) that five or more persons were assembled. (2) that they were assembled for the purpose of committing dacoity. (3) that the accused was one of such persons.

The existence of an intention to commit dacoity may be proved from the conduct of the accused, and the circumstances under which they were arrested. The burden of proof of innocence lies on those arrested under such circumstances which establish such intention. S. 106 I. E. A. 1 Weir 381 23 A, 124 & 391; 22 C. 164, 23 M. 159. Foll. 23 A. 124.

Some members of a gang who had assembled though unarmed at a rendezvous for the common purpose were guilty under S. 402 I. P. C., though not under S. 399 I. P. C. 19 Cr. L. J. 43, 42 I. C. 1003.

Prosecution need only prove that the accused are members of a gang which had in fact made preparation for committing dacoity. But the prosecution need not prove what exact part was played by each member in such preparation. 17 Cr. L. J. 280, 34 I. C. 1000.

S. 403 I. P. C:—Dishonest misappropriation of property.

Evidence:—Prove (1) that the property in question is moveable. (2) that the accused misappropriated it or converted it to his own use. (3) that he did so dishonestly.

Difference between 379 and 403 I. P. C:—The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. In theft the taking must be dishonest, here the taking of the property is not necessarily dishonest. The possession at the inception is innocent, but by a subsequent change of mind he dishonestly misapproates or converts to his own use the property, which he first honestly came by.

S. 403 I. P. C, requires that the property should be shown to have been misappropriated or converted to his own use by the accused. The mere possession of the property is

not sufficient for proving the charge without something to indicate the appropriation or conversion, though long possession without any attempt to find out the owner may amount to evidence of intention to do so.

The chief elements for a conviction under the section is the dishonest misappropriation or conversion to one's own use. In the absence of any overt act on the part of the accused no dishonest motive can be imputed to him simply because he has detained certain documents in his custody. 19 Cr. L. J. 948, 47 I. C. 667.

Where the accused found a thing and merely retained it in his possession, it was held that he could not be convicted of criminal misappropriation. 10 W. R. 23. P. R. No. 2 of 1908. 1 Weir. 455, 8 Cr. L. J. 250, 3 P. W. R. Cr. 72.

A false denial of a loan is not misappropriation in itself. It may amount to an offence under the section when taken together with other circumstances 1 Cr. L. J. 1109, 6 B. L. R. 1093. It is immaterial whether the accused has converted the thing to the use and benefit of himself, or of some one else. 11 W. R. Cr. 1, 12 W. R. 39. The retention of property innocently come by becomes wrongful and fraudulent either from any subsequent change of intention or from knowledge of some new fact with which the party was not previously acquainted. 15 C. 400. It was held that a person cannot be convicted of dishonest misappropriation of property with respect to his retention of a letter. 40 A. 119.

When a person finds property and makes it over to the Police and no owner is forthcoming, although advertised for, the property or its value, if it has been sold, should be restored to the finder. 23 Cr. L. J. 656, 69 I. C. 96.

Where more money than was due was given to the accused, who retained the balance after he found out the mistake is an offence under the section. The offence here is completed by a mental act. 18 Cox. 267. But not where the payment was in respect of a debt barred by the law of limita-

tion as regards recovery by suit. 1 A. L. J. 508, 1 Cr. L. J. 803. An income-tax clerk, who received money which he ought at once to have entered in an account, and paid over into the treasury misappropriated it. He was convicted under S. 403. 12 M. 49, 1 Weir. 455. Where a post-office clerk had abstracted a letter, in order to receive for himself part of the postage payable upon it, the High Court held that he had committed theft of the letter, and had also attempted to commit criminal misappropriation. 14 M. 229.

S. 404 I. P. C:—Dishonest misappropriation of property possessed by a deceased person at the time of his death.

Evidence:—Prove (1) that the property in question is moveable property. (2) that it was in the possession of a deceased person at the time of his death. (3) that it was not thereafter in the possession of any person legally entitled to its possession. (4) that the accused misappropriated it or converted it to his own use. (5) that he did so dishonestly. (6) that he knew the circumstances mentioned in (2) and (3). For the second clause prove further that the accused was, at the time of the owner's death, employed by him as a clerk or servant.

All the elements of misappropriation in respect of a person alive, must be made out. 2 W. R. 39. The offence under this section can be committed, even if the dying owner put the property into the custody of the accused, being his clerk or servant. 11 W. R. 1.

S. 405 I. P. C:—Criminal breach of trust.

Evidence:—Prove (1) that the accused was entrusted with property or with dominion over it. (2) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it. (3) that he did so in violation of (a) any direction of law prescribing the mode in which such trust was to be discharged, or (b) any legal contract, express or implied, which he had made touching the discharge of such trust; or that he wilfully suffered some other persons to do as above. (4) that he acted as in (2) dishonestly.

The two ingredients in the offence, are, first, an original trust, and, secondly, a dishonest appropriation of the trust property. 1 Weir. 460, 1 Cr. L. J. 385.

The property need not have any appreciable value. 27 A 28, 1 Cr. L J. 603. Cancelled cheques of no higher value than mere pieces of paper were held to be property within the meaning of S. 405. Similarly where a paper was handed up to another for being read, it was held an offence under this section could be committed by the taker, the motive for the trust being immaterial. 1905 A. W. N. 9, 2 Cr. L. J. 94. No Criminal liability can arise, if the party acts honestly, though wrongly, under a mistaken view of his duties or rights. 6 M. H. C. R. Appx. 28; 1902 P. L. R. 157. 28 C. 362, or where the entire transaction out of which the alleged trust arises is bona fide disputed. 2 B. H. C. R. 133, nor can a person commit breach of trust unless he has acted dishonestly, as that word is defined in S. 24 I. P. C. 1879 P. R. No. 30. Bare refusal by the accused to allow the removal of a box left in his house by the complainant unless some debt due to him was paid would not constitute any offence under S. 406 I. P. C. 17 M. L. J. 413, 6 Cr. L. J. 330.

It is the intention which is essential and not whether wrongful loss or wrongful gain is actually caused. 33 M. 639, 16 M. L. T. 505, 1914 M. W. N. 894, 15 Cr. L. J. 688. 20 M. L. J. 175, 26 I. C. 135. Unless dishonest intention is shown the accused can not be found guilty under S. 405 I. P. C. 10 Cr. L. J. 255, 3 I. C. 235. Use by a printer of blocks entrusted to him to print complainant's catalogue for the purpose of printing a rival firm's catalogue would be an offence. 6 C. W. N. 203, see also 9 B. L. R. 120. Causing temporary loss even for a time would be an offence. 8 B. L. R. 951, 5 Cr. L. J. 5. Where accused was entrusted with a jewel for raising seven rupees by pledge thereof but he pledged it for more, gave the complainant rupees seven and applied the additional money to his own use without telling him what he had done, he was held guilty under S. 406. 1 Weir. 464, see 4 Cr. L. J. 466, 3 B. L. R. 200,

The excessive delay on the part of village officers in remitting revenue collections to the treasury has been held to be evidence of dishonest misappropriation. 1 Weir. 464. But this presumption may be negatived by evidence that the delay was caused by forgetfulness, or that it was acquiesced in by the person to whom the money was due. 10 B. 256; 1 Weir 462. Non-payment, coupled with a false account either as to the receipt of the money or its disposal, is conclusive evidence. 10 W. R. Cr. 28, 22 C. 313. An agreement entered into between the complainant and the accused for the refund of the money embezzled cannot be pleaded in bar of the prosecution. 1 Weir. 462 & 465, 1884 A. W. N. 105. Where the accused admits receipt of money alleged to have been misappropriated but pleads that he spent it for authorised purposes specifying persons to whom payments were made, the onus is not on him to prove payment, but on the prosecution to prove non-payment for it is only when the latter fact is proved a presumption will arise of misappropriation or breach of trust. Ratanlal 872 & 860. When the prosecution proves the accused has not accounted for the money, it is not incumbent on it further to establish the exact mode of misappropriation. The accused may be left to prove his defence if any. 8 A. L. J. 88, 8 I. C. 687. 33 A 249, 15 W. R. Cr. 5. When a company advanced money to a broker with a condition that it shall be used in a particular way, that the broker shall be responsible for the payment of the money and that he shall indemnify the company against all loss, held by the full Bench, that the money was not 'entrusted' to the broker within S. 405 I. P. C. 15 Cr. L. J. 452, 24 I. C. 332, 7 Bur. L. T. 209.

The property in respect of which criminal breach of trust is committed must be either the property of some person other than the accused person, and the offender should hold the property on trust for such other person. Mere breach of contract is not criminal breach of trust.

In a prosecution for criminal breach of trust, trust must be established beyond all doubt. 13 Cr. L. J. 888, 17 I.

C. 824. Where the accused were entrusted to watch the paddy crops of the complainant and they cut the crops and disposed of the same themselves, they were guilty of either theft or criminal breach of trust. 36 C. 758, 10 Cr. L. J. 253, 3 I. C. 189. Where a clerk in the service of an estate is authorized to receive money on its behalf and to pay them into the estate treasury, money so received by him is not his money for which he has merely to account to the estate but is actually the estate money which is entrusted to him and if he misappropriates the same, he commits criminal breach of trust. 1920 M. W. N. 518, 12 L. W. 295, 58 I. C. 824.

S. 406 I. P. C:—Punishment for criminal breach of trust.

The section covers the cases of all those offenders not specially provided in Ss. 407, 408 and 409 I. P. C. Offences committed by trustees with regard to trust property fall within the purview of this section.

A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner. Hence, where there is no original confidence, there is no trust, and a misappropriation, if punishable at all, will be under S. 403 I. P. C. Indian trust Act, 11 of 1882 S. 3.

A person who pledges what is pledged to him is guilty of this offence. 6 M. H. C. App. 28, 13 Bur. L. R. 286.

The accused was employed by the complainant and others to take their paddy for sale and he sold it to a Marvari. The complainant stated that the accused had with-held from him a portion of the money due from the sale of his paddy. There was a dispute between the parties as to the number of bags that were given by the complainant to the accused. It was held that the accused could not be convicted of criminal breach of trust on refusing to give the complainant money which was claimed by another person as well as by the complainant. 28 C. 362.

When the accused pleaded that the amount claimed by the complainants was due to them as a debt, but having sustained losses in business they were unable to pay it. It was held that in such cases the crucial test is, was the sum due to complainants owed by the accused as a debt, or was it held by them as trust money for complainants over which they had no right of disposition of any kind. P. R. No. 32 of 1901.

There is no breach of trust if there is no dishonest use or disposal. Where a cloth was entrusted to the accused. a washerman, on the understanding that it was not to be worn by men of certain class, and the accused allowed the article to be worn by the prohibited class, the articles being thereby rendered valueless to the owner is an offence under this section.. (1880 Weir 239), where the accused did not apply immediately the money for the purpose for which it was intended (1889 Cr. R. No. 50), and where a Sub-Inspector of Police purchased a pony which had been impounded (16 W. R. 52), this offence was held not to have been committed. The misappropriation of each separate item of money with which a person is entrusted is a separate offence, the facts concerning each of which should form the subject of a separate enquiry. 15 W. R. Cr. 5.

A court charging misappropriation of an aggregate sum representing a general deficiency in the prisoner's accounts is therefore bad. 24 C. 193 contra 17 A. 153 and 18 A. 116. In a charge under the section or under S. 403 I. P. C., it is sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items, or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of S. 234 Cr. P. C., provided that the time included between the first and last of such dates shall not exceed one year. A charge, therefore, of criminal breach of trust or misappropriation containing three counts relating to three sums on

three particular days, in two of which counts the total sum consisted of three separate items is good. 27 A. 69, 31 C. 928, Fol. 24 A. 254, 33 A. 36. The charges must be of the same kind, a charge alleging three distinct acts of falsifying accounts, or of forgery is bad. 32 M. 219, 1 Weir. 462, 465, 30 M. 328. Whilst a hire-purchase agreement was in force the accused pledged the car to different persons on three different occasions. Held, that the pledging of the car by the accused was a violation of the legal contract made by him in regard to the hire of the car and the violation was dishonest. The accused was guilty of the criminal breach of trust as he obtained moneys on the security of the motor car. 17 B. L. R. 670, 16 Cr. L. J. 665, 30 I. C. 649. See also 15 Cr. L. J. 425, 24 I. C. 161. A sale of property by a hirer under a hire purchase agreement, if made after a decree of civil court for unpaid purchase--money, is not a criminal breach of trust. A proceeding under S. 206 I. P. C., could be taken with the sanction of court which passed the decree against the accused. 18 Cr. L. J. 728, 40 I. C. 728.

Special provisions are made in S. 222 (2) Cr. P. C., for a charge of criminal breach of trust. They must be strictly observed and proof must be given that the offence was completed between the dates given. Default in it cannot be cured by S. 537. Any completed act is necessary to constitute the offence of criminal breach of trust. 17 C. W. N. 479, 14 Cr. L. J. 219, 19 I. C. 315.

Though under S. 222 (2) Cr. P. C., the accused may be charged in respect of the gross sum received by him still the prosecution must decide what amount they are prepared to prove the accused lawfully received and lawfully expended and what sum was not. To convict there must be a definite finding of a definite sum traced to the accused. 42 A. 522, 18 A. L. J. 633, 22 Cr. L. J. 84, 59 I. C. 372.

S. 407 I. P. C :—Criminal breach of trust by carrier, &c.

Evidence:—Prove (1) that the accused is a carrier, whar-finger, or ware-house keeper. (2) that he was as such,

entrusted with the property in question. (3) that he committed criminal breach of trust in respect of it.

See the Indian Evidence Act. S. 15 (b).

The mere fact, that a person has received goods having agreed to convey them to some place with or without reward, will not make him "carrier". The carriage of goods must be his profession or calling. 1 Weir 436.

Wharfinger.

Wharfinger means "the occupier of a wharf," and a wharf "includes all wharves, quays, docks, and premises in which goods, when landed from ships, may be lawfully placed."

Warehouse keeper.

Warehouses are either public or private. The former "includes all warehouses, buildings, and premises in which goods, when landed from ships, may be lawfully placed," and warehouse-keeper means the occupier of such.

Private warehouses are simply places of business for tradesmen who are compelled to keep large stocks of goods e. g., even a shed with a tarpaulin roof used for the shelter of goods is a warehouse. 28 L. J. M. C., 213.

S. 408 I. P. C:—Criminal breach of trust by a clerk or servant.

Evidence:—Prove (1) that the accused was the clerk or servant of the person imposing trust. (2) that he was in such capacity entrusted with the property in question or with dominion over it. (3) that he committed criminal breach of trust in respect of it.

Actual conversion need not be proved. A mental act of fraudulent appropriation may be inferred from conduct. P. R. No. 36 of 1889.

Clerk.

In modern usage it means a writer in an office, public or private, either for keeping accounts or entering minutes.

Servant.

A person working under a trading firm on commission to make purchase under instructions is a servant and may be convicted under S. 408 I. P. C. To constitute the relation of master and servant it is not necessary that the person employed should

be engaged for full time, or on a fixed full monthly salary. A person hired for a specified work remunerated by commission on work done, may be a servant. 20 Cr. L. J. 513, 10 L. B. R. 31, 51 I. C. 673. If a person receives remuneration for collecting money and accounting for the same and of giving receipt to the payer, he accepts an express trust. 9 C. L. J. 257, 10 Cr L. J. 482, 4 I. C. 48. A servant of a firm who gets money from the manager on the pretence that it was required for paying the coolies and misappropriates it, is guilty of the offence under S. 408, as the accused was entrusted with the money for the master's benefit. 22 M. L. J. 112, 10 M. L. T. 517, 13 Cr. L J. 15, 13 I. C. 108.

The act of a servant or clerk retaining money for 15 months throws doubt on the bonafides of the accused, though it is not by itself conclusive on the question of criminal misappropriation or breach of trust. 18 Cr. L. J. 655, 40 I. C. 303.

S. 409 I. P. C:—Criminal breach of trust by public servant, or by banker, merchant or agent.

Evidence:—Prove (1) that the accused was either a public servant or a banker, or a merchant, or a factor, or a broker, or an attorney, or an agent. (2) that he was in such capacity entrusted with the property in question or with the dominion over it. (3) that he committed criminal breach of trust in respect of it.

Moneys paid to a Post master for money orders are public moneys; as soon as they are paid they cease to be the property of the remitters, and a misappropriation of such moneys will fall under this section. 7 A. 174. It is not necessary that the property should be that of Government, but it is necessary that it should have been entrusted to a public servant in that capacity. 2 C. L. R. 515. To bring a case of breach of trust within this section it is not sufficient that the accused is a banker, merchant, factor, broker, attorney, or agent by way of business. The property must have been entrusted to him in that capacity, e. g., a banker by business

who is entrusted with property as a friend or private person and misappropriated it, does not commit an offence under this section but, under S. 405 I. P. C. 8 Cr. L. J. 492. To constitute an offence under this section the property entrusted to a public servant must be property which as a public servant he was authorized to receive.

When a kurnam of a village received money from the ryots as revenue due on unassessed lands and as costs of boundary-stones required for such lands and misappropriated the same, he could not be held liable under S. 409, as it could not be said he received the payment as Government money or in trust for Government 1 Weir. 466. Where the accused, a salt officer employed to sell salt to fish-curers at a favourable rate bought some salt for himself showing the same in the books as sold to fish-curers and appropriated the difference between ordinary market price and the favourable rate to fish-curers, he was held liable under this section. 1 Weir. 467.

A Sub-postmaster was asked to make payments for some cash certificates. The value of each certificate was Rs. 8-2-6 and this amount was paid by the Government but the accused paid Rs. 7-2-6 each and himself appropriated the balance. Held, that the accused was guilty under S. 409. 42 A. 204, 18 A. L. J. 93, 21 Cr. L. J. 316, 55 I. C. 476. An offence under the section can be tried by a Magistrate if the embezzled property has been received or retained within his jurisdiction. 4 M. L. T. 481, 9 Cr. L. J. 92, I. C. 796.

S. 410 I. P. C:—Stolen property.

Stolen property defined.

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappro-priated or in respect ofwhich criminal breach of trust has been committed, is designated as "stolen property", whether the transfer has been made or the misappropriation or breach of trust has been committed, within or without British India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Property is not stolen unless it has been obtained by one or other of the five foregoing offences specified in the section. Therefore money obtained upon a forged money-order is not "stolen property". 24 W. R. Cr. 33.

It is immaterial that between the theft and the receipt, the article stolen has changed its denomination, so long as it is the same thing in fact; e. g.. live sheep converted into mutton by being killed, or a gold or silver article converted into a piece of gold or silver by being melted. In such case the same chattle remains though it is altered, but the proceeds of stolen property do not constitute stolen property. 11 Cr. L. J. 730; 8 I. P. C. 929.

S. 411 I. P. C :—Dishonestly receiving stolen property.

Evidence:—Prove (1) that the property in question is stolen (2) that the accused received or retained such property (3) that he did so dishonestly (4) that he knew or had reason to believe that the property was stolen property.

The essence of the offence punishable under this section consists in the receipt or retention, with a full knowledge at the time of receipt that the property was obtained in one of the ways specified in S. 410.

It is immaterial whether the receiver knows or not who stole them. The section does not apply to the actual thief. The motive of the person in receiving or retaining the goods is material.

The receipt or retention must take place within British India, unless the person receiving or retaining out of British India is a British subject. S. 188 Cr. P. C.

Possession of stolen goods shortly before or after the prisoner is found in possession of the goods in respect of which he is charged must be admissible to prove knowledge that those latter goods were stolen. S. 15 ill (c) I. E. A. see Mayne's criminal law, 527. Where the law provides that a presumption arises under certain circumstances, that presumption must arise

independently of whether there is any corroboration or not. 25 I. C 480. Gaps in the prosecution evidence cannot be supplied by raising presumptions under S. 114 I. E. A. 1910 M. W. N. 77, 7 M. L. T. 314. 16 C. W. N. 105, 16 I. C. 257. 15 C. L. J. 517.

If a thief got into a house by house-breaking and stolen property was found in his possession, he may be presumed to have committed the theft as well as house-breaking. 17 Cr. L. J. 82, 32 I. C. 161. Possession of the stolen property by a person on the next morning after a burglary is presumptive evidence that he is one of the thieves. 11 A. L. J. 94, 14 Cr. L. J. 124, 18 I. C. 684. The possession by the accused of the jewels of a person who has been murdered, if unexplained, is presumptive evidence that the accused was the murderer and and the thief. 14 L. W. 418.

Possessing property some time after theft.

No ground for presumption under S. 114 I. E. A., arises where stolen properties of an ordinary kind and of small value are found in the possession of the accused after a long time. 22 C. W. N. 597, 19 Cr. L. J. 702, 46 I. C. 158. Lapse of time after the theft is usually an important factor in determining the guilt of the accused but the importance to be attached to it must vary with the circumstances of the individual case and depends on the frequency with which the property is likely to have changed hands. No maximum period is suggested as that beyond which no inference of guilt can be drawn. 19 Cr. L. J. 189, 43 I. C. 605. In order to raise a presumption the length of time that has elapsed, the amount of property found in a man's possession, and the circumstances leading to discovery, have to be considered and in raising the presumption as to the receipt of the stolen property it is not necessary that there should be evidence that he knew it to be stolen. 1912 M. W. N. 97, 13 Cr. L. J. 140, 13 I. C. 828. The question of what is or what is not recent possession is to be considered with reference to the nature of the article stolen. 11 C. 160. No such presumption arises where some time has elapsed between the theft and the finding of the

goods; e. g., goods of a common description found six months after dacoity, and non-identifiable matter such as rice or salt. 29 A. 138, 1 Weir 427, 429, 13 Cr. L. J. 555, 720.

Possession of stolen cattle three or four months after theft is sufficient to raise presumption of guilt under the section 114 (a) I. E. A., but the accused may set up title by lawful origin to rebut the presumption. 10 S. L. R. 167, 18 Cr. L. J. 411, 38 I. C. 971.

When currency notes lost more than seven months before are traced to the possession of a shroff, it could not be said that the accused was found in recent possession of stolen articles. 17 C. W. N. 1129, 14 Cr. L. J. 571, 21 I. C. 171.

If considerable time has passed between theft and the discovery of the stolen property, possession of that property in itself does not require any explanation. 1912 M. W. N. 529, 13 Cr. L. J. 596, 16 I. C. 164. Where accused is found in possession of stolen property three years after it went out of the owner's possession, very clear evidence is required to show that he must have known it to be stolen. 18 P. W. R. 1914, Cr. 15 Cr. L. J. 521, 24 I. C. 833. Possession of sundry articles traced to the accused four months after the theft cannot sustain a conviction for anything more serious than under S. 411. An accused cannot be made liable for the property found in his wife's house when he does not live there and is not on good terms with her people. 10 M. L. T. 237, 12 Cr. L. J. 549, 12 I. C. 525. An accused was convicted under S. 411 for being dishonestly in possession of stolen property, namely, a copper vessel, which was discovered seven months after its loss: held, that the conviction was bad; the failure of the accused to account for his possession did not relieve the prosecution of the burden of proving that his possession was dishonest. 8 M. L. T. 418, 1910 M. W. N. 819, 11 Cr. L. J. 511, 8 I. C. 145. The recovery of articles which are by nature, capable of constant change of hands, such as cloth, five months after the theft does not make the man, in whose possession they are found,

responsible to explain how he got them. Before convicting an accused under S. 411, the possibility of the accused having obtained the goods of which he is found in possession by lawful means must be excluded. 22 Cr. L. J. 595, 62 I. C. 867. Where a stolen horse was found in the possession of the prisoner six months after it was lost, and there was no other evidence against the prisoner, the prisoner was not called upon for his defence as the possession was not sufficiently recent. 3 C & K 318.

When the article stolen is not produced in court and shown to the witness, courts should attach absolutely no weight to bare statements that the article found with the accused was the article stolen from the complainant. 8 W. R. 16 see also 6 A. 224, 13 Cr. L. J. 720, 16 I. C. 528.

Where the accused was found in possession of stolen property two months after the theft was committed, and gave no account of how he came into possession of it, but denied that he was ever in possession of any articles stolen, it was held that the accused should be convicted under this section and not under S. 379. 1 Weir. 471.

Guilty knowledge is purely a matter of fact, which depends on the circumstances of each particular case; such as the nature of goods offered for sale. Rat 594, 11 C. 160 Foll. 53 I. C. 819, 26 M. L. T. 389, 6 B. 402, the position in life of the person who offers them, the mode in which he accounted for their possession, the secrecy of the transaction, the absence of inquiry where the facts were obviously suspicious, the low price at which they were bought 13 W. R. Cr. 10, 9 B. L. R. 27, 5 Cr. L. J. 63, 23 W. R. Cr. 16, 13 M. 426, and the concealment or defacing of the goods after they passed into the possession of the receiver.

The goods received in question must be stolen property 21 C. 328. Property into or for which the stolen property has been converted or exchanged is not stolen property. P. R. No. 39 of 1881.

Money obtained upon forged money-orders (24 W. R. 33); or an ingot obtained by melting stolen jewellery (P. R. No. 39 of 1881); is not stolen property.

The offence made punishable is not the receiving of stolen property from any particular person, but the receiving of such property knowing it to be stolen. 1913 M. W. N. 696, 14 Cr. L J. 591, 21 I. C. 333 See also 4 L. W. 53; 17 Cr. L. J. 312; 35 I. C. 488.

Where the possession is recent, this fact is in general evidence of theft, and not of receipt of stolen goods with guilty knowledge. But the effect to be given to such possession is a question of fact and not of law. 12 Cr. L. J. 549, see also 15 C. 511, 22 A. 445.

The possession of property which has been stolen is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume, in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing 23 W. R. 26, 25 W. R. 10, 9 B. L. R. 27.

Presumptions :—A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen. S. 14 ill (a) I. E. A.

A person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. S. 114 ill (a) I. E. A.

Possession, meaning of.

Certain stolen goods were sent from one station to another. At the station of delivery, the accused handed the railway receipt to the railway and paid freight. The goods were not removed by the accused. He can be convicted under the section, because though the goods were not removed from

the railway premises, the goods should be regarded to be in the actual possession of the accused. 40 C. 990, 14 Cr. L. J. 318 19 I. C. 1006. The mere production of stolen property by the accused from a jungle which was neither in his possession nor control is not sufficient to support a conviction under S. 411. 13 Cr. L. J. 28, 13 I. C. 220. Where the property is found in the house in the possession of some persons mere discovery of any stolen property in that house does not sufficiently prove that the possession was of any one of those persons. 19 M. L. J. 301, 9 Cr. L. J. 52, 4 I. C. 163. Where stolen property is found in a house occupied by several persons it is not enough to show that the property was found in the house, to convict a member of the family who might have had nothing to do with bringing or keeping it there. 21 Cr. L. J. 40, 54 I. C. 248. The knowledge of the existence of any property found in a hut on search should not without further evidence be imported to any other person than the occupier of the hut nor would that presumption operate even against him if it could be proved that it was possible the property might be there without his knowing. 41 I. C. 350, 18 C. W. N. 498, 15 Cr. L. J. 385, 23 I. C. 985. Rel. 41 C. 754. When a place in which the article is found, is one to which several persons have equal right of access, the article cannot be said to be in the possession of any one of them. 9 C. L. J 663, 13 C. W. N. 861, 10 Cr. L. J. 125, 2 I. C. 681. The mere fact that a person points out a place where stolen property is concealed, if that place is not in his own house or in his own field, but is in the field of another man, is not sufficient to entitle the court to find that the person who pointed out had received it, or retained it, knowing it to be stolen. There must be some evidence which suggests that the accused himself concealed the article in the place where it was found. 18 Cr. L. J. 490; 39 I. C. 330. 17 A. 576, see also 14 Cr. L. J. 602; 21 I. C. 474.

The managing member of a joint Hindu family may be convicted of retaining stolen property. Knowledge of the presence in the house of the stolen property if established against

the managing member, he must, as the house-master, be presumed to have been in possession of it. 29 A. 598.

When there was evidence that the wife had received part of the stolen property from one of the thieves, there was no evidence that the husband was present at the time, and there was no evidence that the wife was acting under his compulsion. It was held that the wife was properly convicted of receiving stolen goods. 19 Cox. 524. If the wife has received stolen goods without the control or knowledge of and apart from her husband, the husband cannot be held guilty of receiving even though he afterwards adopts his wife's receipt.

If the wife has voluntarily committed theft, the husband can be convicted of receiving stolen property from the wife. 9 Cox. 251.

Reason to believe defined.

The word "believe" is a very much stronger word than 'suspect'. A person must be held to have "reason to believe" property to be stolen within the meaning of this section when the circumstances are such that a reasonable man would be led by a chain of probable reasoning to the conclusion or inference that the property he was asked to deal with was stolen property, although the circumstances may fall short of carrying absolute conviction to his mind on the point. P. R. No. 37 of 1888.

A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise. S. 26 I. P. C.

The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity, or some other offence. 6 B 731.

Where the circumstances do not raise the presumption that a person received the property knowing it to be stolen, the accused cannot be convicted of this offence merely because he is in possession of the property and does not acco-

unt for his possession. 6 A. 224, 4 A. W. N. 55. Foll. 29 A 138; Dist. 19 B 749, 43 I. C. 605.

Where the accused is charged only with dishonest retention a guilty knowledge at the time of receipt is not necessary. 4 M. H. C. R. Appx. 42, 9 C. W. N. 1027, 2 Cr. L. J. 847.

Burden of proof.

If an accused gives reasonable accounts as to how he came into possession of the property either by telling the real persons or otherwise, it is for the prosecution to show that the account is false. 17 Cr. L. J. 68, 32 I. C. 660.

Fraudulently.

A person is said to do a thing "fradulently", if he does that thing with intent to defraud but not otherwise. S. 25 I. P. C. There are two elements in Fraud; (1) deceit; (2) some injury to the person deceived. Mere deceit is not fraud. 5 A. 217, 4 B. 657. Evidence may be given of similar facts to show the existence of a fradulent intention. Ss. 14 and 15 I. E. A. A general intention to defraud without the intention of causing wrongful gain to one person or wrongful loss to another is sufficient to support a conviction. 9 C. 53. 'Fraud' in the penal code is used in its ordinary and popular acceptations and the concealment of an already practised fraud is a fraud. 37 B. 636, 15 B. L. R. 108, 14 Cr. L. J. 518, 20 I. C. 998.

A dishonest or fraudulent intention distinguished from motive.

There is a distinction between the meaning of terms 'fraudulently' and 'dishonestly', the former denotes an intent to deceive. In deciding whether a given act is done with a dishonest or a fradulent intention regard must be had to the primary, and not the more remote intention, *i. e.*, the ultimate end or object desired, in other words the motive. 19 C. 380, 8 A. 653, 661.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. S. 8 I. E. A.

Deceit is the first element in the offence. A person is deceived when he is induced to believe as true that which is

untrue. The means of deceit are false representations, and representations may be made by writing, words, or conduct. 32 C. 941, 13 Cr. L. J. 456. The representation must be of a fact and not of a mere matter of opinion. A mere false pretence as to an existing intention will support a charge of cheating. 1 Weir. 478. Promises unkept are cases of breach of contract, and not of cheating. 4 Cr. L. J. 154, 10 C. W. N. 1005. Intention to cheat must exist at the time the promise was made *i. e.*, that the accused did not then mean to keep his promise, and the subsequent conduct of the accused is only evidence to show his previous dishonest intention. 9 B. H. C. R 448, 5 W. R. Cr. 5, 1 Weir. 476, 479, 5 Cr. L. J. 478. The fradulent or dishonest intention must exist at the time of the inducement.

In the definition of cheating there are two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced to deliver any property to any person or to consent that any person shall retain any property. In order to constitute the offence of cheating the person who induces another to do this class of acts must fraduiently or dishonestly induce the persons deceived to do that kind of act. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In order to constitute the offence of cheating with regard to this class of acts the person who induces another to do them must intentionally induce him to do them. In the first classes of cases inducing must be fradulent or dishonest. In the second class of acts the inducing must be intentional. 9 C. W. N. 764.

Joinder of Charges.

The mere fact that property stolen on two different occasions from different persons is found at one and the same time in the possession of an accused person is not of itself sufficient to prove that the accused has committed two different offences under S. 411, as it is quite possible that the pro-

perty though stolen on two different occasions may have been received from the same thief at one time. 13 A. W. N. 101, 15 A. 317, 5 Cr. L. J. 123.

Unless the receiving of stolen goods is joint, persons cannot be tried jointly for receiving them under S. 239 Cr. P. C., simply because the goods were stolen in one theft, as the acts of receiving in such a case by different persons on different occassions at different places are not only different offences but different transactions. 17 Cr. L. J. 477, 36 I. C. 157.

Unless stolen articles come into possession of the accused at one and the same time, a separate charge is necessary for each of the articles passed. It is only such a defect in the charge as has prejudiced the accused that invalidates a conviction. 11 Cr. L. J. 597, 8 I. C. 229.

Different persons charged with separately retaining different articles of stolen property, though proceeds of the same theft, cannot be tried together, as the offences charged cannot be said to have been committed in the same transaction. 10 C. W. N. 912, 7 B. L. R. 527, 29 B. 449. The joint trial of them will not be illegal when it is shown that these properties are under joint control of all of them or the theft is committed connectedly or in collusion. 21 Cr. L. J. 757, 58 I. C. 841. A joint trial of two accused, one for theft and the other for receiving stolen property, is not illegal. 38 A. 311, 14 A. L. J. 344, 17 Cr. L. J. 159, 33 I. C. 639, and see section 539 (e) Cr. P. C. Three persons in separate independent possession of separate articles of stolen property cannot be tried together under S. 411. Such an illegality cannot be cured under S. 537 Cr. P. C. 19 A. L. J. 815. Where properties stolen at a burglary are recovered from two different persons on two different dates they cannot be tried together for an offence under S. 411. 22 Cr. L. J. 684, 63 I. C. 620. Several persons receiving stolen property at different times should be charged and tried separately in respect of each article. A joint trial being illegal an objection can be taken for the first time in the High Court. 21 Cr. L. J. 619, 57 I. C. 283.

S. 412 I. P. C:—Dishonestly receiving property stolen in the commission of a dacoity.

Evidence:—Prove (1) that the property in question is stolen property. (2) that the possession of such property was transferred by the commission of dacoity. (3) that the accused received or retained such stolen property. (4) that he did as in (3) dishonestly. (5) that he knew or had reason to believe the circumstances stated in (2) or prove (1) that the property in question was stolen property. (2) that the accused received it. (3) that he received it from a person who belonged to or had belonged to a gang of dacoits. (4) that he did as in (3) dishonestly. (5) that he knew or had reason to believe that the person from whom he received the property belonged to or had belonged to a gang of dacoits. (6) that he knew or had reason to believe that the property was stolen property.

The section refers to criminals other than the original dacoits, and punishment cannot be awarded under it to persons already convicted under S. 391 or 400, as the case may be, unless the one crime is clearly separate from the other. 1 W. R. Cr. 48, 3 W. R. Cr. 10, 5 W. R. Cr. 66.

Separate conviction under Ss. 395 and 412 I. P. C., are illegal. 18 W. R. 42.

S. 413 I. P. C:—Habitually dealing in stolen property.

Evidence:—Prove (1) that the property in question is stolen property. (2) that the accused received it or dealt in it. (3) that he did so habitually. (4) that he did so knowing or having reason to believe it to be stolen property.

In order to support a conviction under this section, it must be shown that the property was received on different occasions and on different dates. A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. 19 C. 190.

The accused should be tried first for receiving, and then, if convicted, he should be tried under the section, put-

ting the conviction, under S. 411 in evidence against him, and proving other receipts. 8 C. 634.

Other receipts may be proved by proof of previous convictions for this offence, but in every case some fresh receipt subsequent to the last conviction should first be proved. 10 B 174, 12 C. 520.

Where there have been no previous convictions, the habit may be proved by acts of the accused in the past, which acts must be strictly proved. It must be shown that property was dishonestly received by him on different occassions, and on different dates.

S. 414 I. P. C :— Assisting in concealment of stolen property.

Evidence :—Prove (1) that the property in question is stolen property. (2) that the accused assisted in concealing, or disposing of, or making away with, such property. (3) that he did as in (2) voluntarily. (4) that he knew or had reason to believe that the property was stolen property.

The section is directed against persons who have neither stolen nor received stolen property but who try to prevent the property being traced or recovered. 8 Cr. L. J. 11. This section does not impose on the prosecution the duty of tracing in all cases the owners of the property stolen. All that is needed is to show that the accused voluntarily assisted in concealing or disposing of property which he had reason to believe to be stolen property. 14 Cr. L. J. 793. This latter fact may be proved from the accused's own conduct, as where a poor Pathan cooly had jewels usually worn by the wealthier classes. 14 B. L. R. 893, 13 Cr. L. J. 793. 17 I. C. 537, 1887 A. W. N. 96.

The words 'disposing of' must be construed in the light of the words 'concealing' and 'making away with' and they do not include 'restoring to the owners'. 11 Cr. L. J. 493, 7 I. C. 465.

S. 415 I. P. C :—Cheating.

Evidence:—Prove (1) the deception practised ; (2) the dishonest or fraudulent intent; (3) the delivery to, or retention by, any person of any property; or the doing or committing by the person deceived of any act calculated to injure him in body, mind, reputation, or property, and which act he would not have done but for the deception.

Cheating and Extortion.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception.

The accused applied to the postal authorities and obtained an appointment in the Department but he had not mentioned in his application that he was dismissed from Government service. This does not amount to an offence under S. 417 I. P. C., for neither the act of appointment, nor the omission to inquire into the petitioner's antecedents caused, or was likely to cause, damage or harm ' to the body, mind, reputation, or property ' of the person deceived. It was held that no offence was made out and the sentence was quashed. Bombay Criminal application for revision No. 402 of 1909 dated 24th February 1910.

In order to establish an offence of cheating, it is necessary to show that deception has been practised, and that by that deception a person has been fradulently or dishonestly induced to part with property. 22 Cr. L. J. 664, 69 I. C. 152.

S. 416 I. P. C.—Cheating by personation.

The offence consists of two elements. (1) Cheating (2) Personation.

Personation by it-self is no offence. 32 C. 775.

It is essential to personation that some individual is personated whether he be a real person, alive, or dead, or purely imaginary, *i. e.*, fictitious.

A wrong description is not personation ; e. g., to describe a Brahman woman as a Kirarv, though it may be

cheating under S. 415 I. P. C. 1 Cr. L. J. 949. To 'personate' means to pretend to be a particular person. 33 L. J. (M. C.) 81.

Where A falsely represented himself to be B at a University Examination, got a hall ticket under B's name, and wrote papers in B's name; it was held that A had committed the offence of cheating by personation and forgery. 12 M. 151 see also 13 B. 506.

A witness falsely deposing in another's name should be charged with giving false evidence, under S. 193, and not with cheating by personation. 1 Weir. 480.

S. 417 I. P. C :—Punishment for cheating.

Evidence :—Prove (1) that the person deceived delivered to some one, or consented that some person shall retain certain property, (2) that the person deceived was induced to do as above, (3) that such person acted upon such inducement in consequence of his having been deceived by the accused, (4) that the accused acted fradulently or dishonestly when so inducing that person.

Or prove (1) that the person deceived did, or omitted to do, something which he was not bound to do or omit to do, (2) and (3) as above, (4) that the accused so induced that person intentionally, (5) that such act or omission caused, or was likely to cause, damage or harm to that person in body, mind, reputation, or property.

In a prosecution on a charge of attempting to cheat a certain person, that person need not be the complainant. 12 C. W. N. 750.

Where an accused person attempts to cheat a whole body of villagers and speaks to them in a body and to each individual villager for the purpose, he may be tried on one charge for each attempt to get money from them. 2 C. L. J. 618.

Whenever the words "with intent to defraud" or Fradulently" occur in the definition of a crime, two elements are essential to the commission of a crime, (1) deceit or

intention to deceive or in some cases mere secrecy and (2) actual or possible injury or intention to expose a person thereto by means of that deceit or secrecy. The term 'fraudulently' implies an intent to deceive so as to expose any person to loss or risk of loss. The term 'dishonestly' implies a deliberate intention to cause wrongful gain or wrongful loss. 22 Cr. L. J, 721, 64 I. C. 33, 10 L. B. R. 366.

To constitute the offence of cheating there must be a deceit and secondly a fraudulent, or dishonest representation by words or conduct. The mere refusal of a person to return a bond after the money under it has been paid, will not constitute an offence of cheating 22 Cr. L. J. 169, 59 I. C. 921, 2 Pat. L. T 211.

S. 418 I. P. C:—Cheating with knowledge that wrongful loss may ensue to a person whose interest offender is bound to protect.

Evidence:— Prove (1) that accused cheated some person (2) that he was under a legal obligation to protect the interest of that person. (3) that the cheating had relation thereto. (4) that the accused knew he was likely to cause wrongful loss to such person.

This section applies to cases of cheating by guardians, trustees, solicitors, agents, the manager of a Hindu family, kurnavan of a turward in Malabar or by directors or managers of a bank in fraud of the share-holders.

The guilty knowledge which is essential under the section cannot be presumed from the mere fact that the accused authorized the issue of a balance-sheet containing false entries. Such knowledge must be proved by the circumstances of the case. 11 Cr. L. J. 624.

S. 419 I. P. C:—Punishment for cheating by personation.

Evidence:—Prove (1) that accused cheated complainant. (2) that he did so by pretending to be some other

person; or by knowingly substituting one person for another; or by representing that he, or some other person, is a person other than the person he really is.

A person travelling with a forged Railway pass and being detected should be convicted under S. 419 and 511 I. P. C., his attempt to cheat by personation not being successful. 21 M. L. J. 748, 12 Cr. L. J. 406, 11 I. C. 590.

S. 420 I. P. C:—Cheating and dishonestly inducing delivery of property.

Evidence:—Prove (1) the same point as for S. 417, with the modification that the latter part of this section is confined to cases of cheating where the injury caused is the delivery of property, or the making, altering or destroying wholly or partly a valuable security, or making, altering or destroying anything signed or sealed which is capable of being converted into a valuable security. 23 W. R. 43

Simple cheating is punishable under S. 417. When there is delivery of any property or destruction of any valuable security S. 420 is the proper section to apply.

'Property' in this section refers only to moveable property. 2 A. W. N. 6. It includes money. 32 C. 22.

To sustain a conviction, it must be proved that the person deceived was induced to do something which otherwise he would not have done, and that his act has caused himself some damage. The damage must be proved by evidence. 57 I. C. 103 see also 18 A. L. J. 371, 21 Cr. L. J. 362. 55 I. C. 730.

To constitute an offence under S. 420 the dishonest intention must either precede or accompany the dishonest act. 11 Cr. L. J. 295, 6 I. C. 250.

In order to establish an offence under S. 420 I. P. C., it is necessary to show that deception has been practised, and that by that deception a person has been fraudulently or dishonestly induced to part with property. 23 Cr. L. J. 661, 69 I. C 152.

The prosecution has to prove that the representation made by the accused was false and that he had no intention of carrying out his promise at the time of making it. 13 Cr. L. J. 15, 13 I. C. 386, 6 L. B. R. 38. The onus as regards dishonest or fraudulent representation is upon the prosecution and not on the defence. 15 A. L. J. 807, 19 Cr. L. J. 45, 42 I. C. 1005. See also 20 Cr. L. J. 769, 53 I. C. 609.

Cheating by false representation, in respect of a future event must be proved by showing that the representation was false to the knowledge of the accused at the time it was made. 15 B. L. R. 297, 14 Cr. L. J. 232, 19 I. C. 328.

Where the accused had executed a Kobala and presented it for registration but took it back from the sub-registrar before registration on a pretext and tore it to pieces, held, that the charge of cheating could not be maintained as the person cheated was the sub-registrar and he did not complain. Under the circumstances of the case the charges should not be enquired into by a criminal court as a civil suit for specific performance was pending. 21 Cr. L. J. 16, 30 C. L. J. 175, 54 I. C. 64. The fact that the accused after obtaining money by a false promise paid back a portion of the same, does not affect his criminality. The test is not what he did afterwards, but what was in his mind at the time when the money was paid to him, whether he then intended to repay the same. 9 C. L. J. 605, 10 Cr. L. J. 487, 13 C. W. N. 728, 4 I. C. 65. Promise to do something in future may not amount to cheating, but it may lead to the inference that the accused has the power to do it in future and hence it is indictable. 11 Cr. L. J. 428, 6 I. C. 964, 26 P. W. R. 1910 Cr. A student producing a certificate, issued to another student for the reduced fare concession and receiving a pass, is not guilty of cheating in absence of any rule prohibiting transfer of student's tickets. 7 M. L. T. 201, 11 Cr. L. J. 339, 1910 M. W. N. 510, 5 I. C. 973. The despatching of an insured envelope containing waste paper with the intention of furnishing evidence of payment of debt, is an at-

tempt of cheating and the sender should be convicted as such. 14 Cr. L. J. 436, 20 I. C. 596.

The action of an accused in putting blank sheets of paper in a registered insured envelope and sending the cover to the complainant to whom he owed money to create evidence to plead discharge, amounts only to an attempt to cheat and not cheating under S. 420 I. P. C., in as much as the acknowledgement receipt of an insured parcel was not a valuable security. 17 Cr. L. J. 272, 34 I. C. 992. 3 Pat. L. W. 99.

The essential test in cases of cheating being the deception of the victim, the dishonest causing to arise in his mind an impression, the reverse of truth calculated to induce him to do or refrain from doing something he would not otherwise do or refrain from doing. 15 Cr. L. J. 265, 23 I. C. 473.

Where the accused negotiated a hundi payable at sight and drawn on a firm knowing that it will not be paid, and spent the money obtained on speculative transactions but took no steps to have it honoured or to repay the money, he was guilty of cheating. 23 B. L. R. 340. 22 Cr. L. J. 305, 60 I. C. 993.

A court will not take notice of a complaint of cheating except when it is put in by the person actually defrauded. 22 Cr. L. J. 672. 63 I. C. 464.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Ss. 421-424 I. P. C.

S. 421 I. P. C :—Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

The provisions of Ss. 421 to 424 I. P. C., are very similar to those of Ss. 206 to 210. Both relate to frauds. Under Ss. 206 to 210, however, the forbidden acts constitute frauds upon courts of justice, whilst those forbidden under Ss. 421 to 424 are frauds upon creditors.

Evidence :—Prove (1) that accused removed, concealed, or delivered the property; or that he transferred it or

caused it to be transferred to some one. (2) that such transfer was without adequate consideration. (3) that accused thereby intended to prevent, or knew he was thereby likely to prevent, the distribution of that property according to law among his creditors, or creditors of another person (4) that he acted as above dishonestly or fraudulently.

Under the section, the intention must be to prevent property from being distributed according to law amongst creditors, and the section covers benami transaction in fraud of creditors. 1899 P. J. L. B. 593. Though there is nothing necessarily fraudulent in such transaction by itself. 6 Moore, I. A. 63. Persons who, having made over their available property with intent to defraud their creditors, come to the Insolvent court for protection commit offences under these sections.

S. 422 I. P. C:—Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

Evidence:—Prove (1) that the debt or demand was due to the accused, or some other person. (2) that accused prevented such debt or demand from being made legally available for his debts, as for debts of another person. (3) that he did as above dishonestly or fraudulently.

Unless the prevention is accompanied by a dishonest or fraudulent intent the section cannot apply. 23 C. 314.

The mere transfer of his interest by a mortgagor can not be said to be fraudulent or dishonest, merely because he has, as a matter of fact, previously mortgaged his property. 14 Cr. L. J. 141.

S. 422 I. P. C., relates to fraudulent proceedings to prevent the attachment and sale under S. 60 of the Civil P. C. of debts due to the accused himself, or to any other person.

A mere breach of contract would not constitute an offence under this section unless the prevention is made dishonestly or fraudulently. 22 W. R. Cr. 43, 28 C 314, 5 C. W. N. 174. A transfer of the equity of redemption by the

mortgagor to a third person does not constitute an offence under the section 14 Cr. L. J. 141, 18 I. C. 893.

S. 423 I. P. C :—Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

Evidence :— Prove (1) that accused signed, executed, or became a party to the deed, or instrument in question. (2) that the purport of such document was to transfer, or to subject to a charge, the property or any interest in question. (3) that such document contained a false statement relating to the consideration, or relating to the person for whose use or benefit it was really intended to operate. (4) that the accused did as above dishonestly or fraudulently.

This section punishes the fraudulent insertion of false statements in deeds affecting property.

Two ingredients are required to make up the offence: (1) a fraudulent intention, and (2) a false statement as to the consideration for the document or the person in whose favour it is to operate. 25 A. 31, 6 Cr. L. J. 111, 8 Cr. L. J. 486. The institution of a civil suit is not a condition precedent to a maintenance of a charge in the criminal court for this offence. 3 A. W. N. 209. It is not every false statement in a deed of sale that is an offence under this section. Its operation is confined to statements relating to consideration or the person to be benefited by the instrument. 2 M. W. N. 413, 10 M. L. T. 363, 12 Cr. L. J. 547, 12 I. C. 523, 37 M. 47.

S. 424 I. P. C :—Dishonest or fraudulent removal or concealment of property.

Evidence :— Prove (1) that accused concealed, or removed the property, or that he assisted to do so. (2) that he did as above dishonestly or fraudulently. Or prove (1) that accused was entitled to the demand or claim in question. (2) that he released the same. (3) that he did so dishonestly, or with intent to defraud.

This section contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. 21 W. R. 10.

Acts such as the removal by a tenant of his furniture, or crops, to avoid a distress for rent or attachment are punishable. 22 M. 151, 8 M. L. J. 259, 1 B. L. R. 515, 12 Cr. L. J. 611, 12 I. C. 987, 25 M. 729. A removal of crops in violation of an order which the person making it has no authority to pass would not be within this section. 1 Weir 483 & 484. In the case of a distress, its legality must be strictly proved. 1 Weir 485. Care must be taken that the purely civil rights are not disposed of under this section in criminal courts. 1 Weir 483, 1 Cr. L. J. 491. Legality or formality of a mode of attachment allowed by the civil courts is not a matter for the Magistrate's consideration. 8 W. R. Cr. 17. When a bona fide claim of title is raised, the accused is entitled to acquittal but whether the claim is raised bona fide or not is a question of fact and has to be determined in the circumstances of each case. The finding as to 'dishonest' or 'fraudulent' removal can be implied from the judgment read as a whole though those words are not used. 1 Pat. L. T. 318, Where the tenants are charged under S. 424 I. P. C., for removing the entire produce from their field, the courts below must come to a clear and definite finding as to their dishonest intention. 2 Pat. L. T. 627.

Unless dishonesty is proved a conviction under S. 424 is unsustainable. 22 Cr. L. J. 142, 59 I. C. 654.

Ss. 425–440 I. P. C.

S. 425 I. P. C:—Mischief. Mischief.

Mischief, like most crimes, comprises a mental, and a physical element. The mental element is the intention, express or implied to cause "wrongful loss, or damage". The physical element is an act of destruction or an act causing injurious change to property.

There are fourteen aggravated forms of the offence of Mischief, which may be classified under the following heads.

(1) By reason of the amount of the damage caused S. 427. (2) Mischief with regard to animals. Ss. 428, 429. (3) Mischief in regard to water supply and public works. Ss. 430 to 434. (4) Mischief by fire. Ss. 435, 436. (5) Mischief in regard to decked vessels. Ss. 437, 438. (6) Mischief in regard to any vessel, with intent to steal. S. 439. (7) Mischief with preparation for causing death or hurt, or wrongful restraint, or fear of such. S. 440.

The offence of Mischief may be committed with reference to both moveables as well as immoveables.

S. 426 I. P. C :—Punishment for mischief.

Evidence :—Prove (1) that accused caused the destruction of some property, or some change in such property, or in the situation thereof. (2) that the above act destroyed or diminished the value or utility of such property, or affected it injuriously. (3) that the accused did as in (1) intending or knowing that he was likely to cause loss or damage to the public or to any person. (4) that the causing of such damage or injury was wrongful.

'Change' means a physical change in composition or form. A change in value is not sufficient to consitute mischief.

One who has stolen a sheep cannot be charged with theft and mischief if he changed the sheep into mutton by killing it. 5 B. L. R. 460. But where mischief precedes theft as in cutting and carrying away a tree, a double conviction was maintainable. 2 B. H. C. R. 392, see also 11 B. H. C. R. 13, 6 W. R. Cr. 5. The essence of the offence is that it should have been caused wilfully and with a knowledge that it was wrongful ; therefore mere negligence, such as allowing cattle to stray into adjoining premises, though punishable under special acts, is not an offence within S. 425. 10 W. R. Cr. 29, 8 B. L. R. 857 & 549, 14 W. R. Cr. 31, 6 Cr.

L. J. 13, 13 Cr. L. J. 536, 6 M. H. C. R. Appx. 37. It is not an offence under the section if the damage was caused in the bonafide exercise of a right, reasonably supposed to exist. 21 W. R. Cr. 38, 8 M. L. T. 246 & 385, 1 Weir. 488, 489, and 490, see also 58 I. C. 828. 11 Cr. L. J. 566, 8 I. C. 128. but when a man wantonly destroys crops raised by another, a bonafide assertion ofthe right to the land would be no answer to a charge of mischief. 1 Weir. 491, 1 Cr. L. J. 668. The exercise of a supposed right must be reasonable. The damage done to the property should be of a destructive character.

To cut a crop that is grown for the purpose of being cut is not causing such a change in the situation thereof as diminishes its value or utility unless it has been cut while unripe nor could it be said to affect it injuriously because it renders pilfering easier. 18 W. R. Cr. 10, 7 C. W. N. 713.

The section is confined to physical injury resulting from a physical cause.

Throwing a shoe among persons who were eating was held not to be mischief, even though, in the estimation of the person eating, their food was thereby polluted, and rendered unfit for use. 24 A. 155.

To sustain a conviction under S. 426 I. P. C., it must be found that the accused had intention to cause wrongful loss or had knowledge that he would cause such loss. Mere finding that wrongful loss was caused is not enough. 56 I. C. 434.

It is no offence for a member of the public to pull down an obstruction created by a trespasser to a public road and then to exercise his right of way, because the trespasser cannot obtain possession by a mere act of entry or by the continuance of that act, so long as this act is disputed and resisted. 39 M. 57, 1 L. W. 911, 15 Cr. L. J. 723, 26 I. C. 171. A mortgagee cutting a few trees on the mortgaged property, to repair another portion thereof is not guilty of mischief. 1 L. W. 274, 15 Cr. L. J. 290, 23 I. C. 498. A tenant cutting trees standing on his holding under a bona-fide claim of right is not

guilty under S. 426 I. P. C., and it is immaterial that the motive in cutting the trees was malafide. 19 Cr. L. J, 729, 46 I. C. 409. Where in a prosecution under S. 426 I. P. C., both parties claim owner-ship of the property in question, conviction of the accused without finding as to ownership cannot be sustained. The trying Magistrate should hold that the accused was acting in a bona fide claim of right. 22 Cr. L. J. 507, 62 I. C. 331.

S. 427 I. P. C:—Mischief causing damage to the amount of fifty rupees.

Evidence:—Prove the same four points as for S. 426 and further (5) that the loss or damage caused amounts to Rs. 50, or more.

A person allowing his cattle, habitually and intentionally to graze on the crops of others is guilty under S. 427 I. P. C., and Cattle T. Act S. 26. 21 B. L. R. 247; 20 Cr. L. J. 387, 50 I. C. 995.

Where the accused is only guilty of negligence, he is not liable to be convicted of mischief, for that offence imports that the act was done wilfully. 13 Cr. L. J. 536, 15 I. C. 808.

S. 428 I. P. C:—Mischief by killing or maiming animal of the value of ten rupees.

Evidence:—Prove points (1) to (4) as for S. 426; and further—(5) that the property injured consisted of an animal or animals, (6) that the value thereof at the time of injury was Rs. 10 or more. (7) that the injury in question was caused by killing, poisoning, maiming, or rendering useless such animals.

Maiming—implies a permanent injury. 12 Bur. L. R. 116. Wounding is not necessarily maiming.

The cutting off the ears of a horse is maiming within the meaning of this section. 35 M. 594, 12 Cr. L. J. 482. See also 22 M. L. T. 68, 18 Cr. L. J. 620, 39 I. C. 988.

The blinding of a mare's eye by pouring Nitric-acid into it was held to be maiming. 1 Mood Cr. C. 205.

If a person inflicts wound on an animal whereby it is disabled for some days only, this offence will fall under S. 426. 3 B. L. R. 503.

S. 429 I. P. C:—Mischief by killing or maiming cattle, &c., or any animal of the value of 50 rupees.

The damage to each animal, other than those specified (elephant, camel, horse, mule. buffalo, bull, cow or ox) must amount to fifty rupees. 22 C. 457.

Note:—It has been held in Madras that a calf does not come within the terms "bull, cow, or ox," and therefore, if not worth Rs. 50, its destruction must be dealt with under S. 425 or 428, according to its value but Calcutta High Court has held a contra view. 22 C. 457.

A bull dedicated to a temple is within the section. 11 M. 145.

S. 430 I. P. C:—Mischief by injury to works of irrigation or by wrongfully diverting water.

Evidence:—Prove points (1) to (4) as for S 426; and further—(5) that the mischief in question caused, or was likely to cause the diminution of the supply of water. (6) that such supply of water was for purpose of agriculture; or for food or drink for human beings or for animals which are property; or for cleanliness; or for carrying on any manufacture. (7) that such mischief was done with a knowledge that it would, or was likely to, cause such diminution of the supply of water.

It is not necessary to prove actual loss. 1 Weir. 506 contra 34 A. 210, 9 A. L. J. 162; 13 Cr. L. J. 141; 13 I. C. 829.

The section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds. 1 Weir 510.

The placing, across a channel, of an embankment 1 Weir. 505. or the cutting of an embankment, 33 C. 437, may lead to a decrease of water supply.

To determine whether a complainant has a right to the supply of water, and whether the supply has been diminished, a Magistrate may hold an enquiry, record evidence and make a personal inspection. 1 Weir. 508.

To sustain a conviction under this section, it is not necessary that the accused must know that certain lands are being actually irrigated by the channel which they obstructed. It is enough if they may reasonably be expected to know that their act is likely to be attended with one of the consequences contemplated in the section. This knowledge may easily be attributed if the water course is an artificial one. 35 C. 437, 12 C. W. N. 534, 7 Cr. L. J. 367. To substantiate an offence under S. 430 I. P. C, the prosecution must prove that there has been unlawful and intentional interference by the accused with the admitted or proved rights of the complainant. 32 C. L. J. 476, 22 Cr. L. J. 415, 61 I. C. 655. Accused, who without any right, dammed the water of a channel and diverted it in another way, were held to be rightly convicted under S. 430, as they had an intention to cause wrongful loss. 22 Cr. L. J. 270, 13 L. W. 266, 60 I. C. 670. Taking more water than one is entitled to against an order as to turns, and to cause diminution of supply to others is punishable under S. 430. 2 M. W. N. 349, 12 Cr. L. J. 551, 12 I. C. 527.

S. 431 I. P. C :—Mischief by injury to public road, bridge, river or channel.

Evidence :—Prove points (1) to (4) as for S. 426; and further—(5) that the mischief in question consists of an act rendering or likely to render impassable or less safe, a public road, bridge, navigable river or channel, natural or artificial, for the purpose of travelling or conveying property. (6) that such mischief was done with a knowledge that it would, or was likely to, cause such injury.

A path through a jungle is not a road. 1899 P. J. L. B. 629.

When a tree floating down a stream caused damage to a bridge and the evidence showed the accused cut a tree 8 miles higher up the stream and left it to dry in the bank, the conviction was set aside as there was neither the requisite intention nor knowledge to bring it within section S. 426. 1 Weir 510.

S. 432 I. P. C :—Mischief by causing inundation or obstruction to public drainage attended with damage.

Evidence :—Prove points (1) to (4) as for S. 426, and further :—(5) that the mischief consisted inundation or obstruction to drainage. (6) that such inundation or obstruction was or was likely to be, attended with injury or damage. (7) that such drainage was public. (8) that the mischief was done with a knowledge that it would, or was likely to, cause such injury.

The act in question must itself cause or be likely to cause an inundation, etc., otherwise it will not constitute mischief. Probable consequential damage or damage only incidentally caused thereby will not render an act mischief. 4 M. H. C. R. App. 15, 1 Weir. 511, 512. The act must be done with knowledge of the injurious results. 25 W. R. Cr. 69

S. 433 I. P. C :—Mischief by destroying, moving or rendering less useful a light-house or sea-mark.

Evidence :—Prove points (1) to (4) as for S. 426, and further—(5) that the mischief consisted of an act causing the destruction, or moving of, or rendering less useful, a light house, sea-mark, &c.

(6) that such light-house, sea-mark, &c, was at the time of mischief used as a guide for navigation.

S. 434 I. P. C :—Mischief by destroying or moving, etc., a land-mark fixed by public authority.

The mark should be fixed by authority of a public servant lawfully empowered. A first-class Magistrate investigating a case uuder S. 145 Cr. P. C. is not such an authority 27 A. 300, 1 Cr. L. J. 991 &1042.

A bona fide removal is not within this section. Ratanlal 746.

S. 435 I. P. C :—Mischief by fire or explosive substance with intent to cause damage to the amount of one hundred rupees or in case of agricultural produce ten rupees.

Evidence :—Prove points (1) to (4) as for S. 426, and further—(5) that the mischief was caused by fire or some explosive substance. (6) that the damage caused thereby amounted to Rs. 100 or more; or if the property in question is agricultural produce, to Rs. 10 or more. (7) that accused intended or knew that he was likely thereby to cause such damage.

Intention or knowledge is the gist of the offence, not mere negligence. 8 B. L. R. 851, 1 M. L. T. 444, 4 Cr. L. J. 446, 3 W. R. Cr. 7.

A revolver is not an explosive substance. 1 Weir. 255.

S. 436 I. P. C :— Mischief by fire or explosive substance with intent to destroy house etc.

Evidence :—Prove points (1) to (4) as for S. 426, and further—(5) that the property injured consisted of a building (6) that such building was ordinarily used as a place of worship or as a human dwelling, or as a place for custody of property.

The intention is a most important element in this charge. 3 W. R. Cr. 18.

Building.

It is not necessarily a finished structure. 11 Cox. 132. A wall (surmounted by a thatch) of an enclosure in which there were several thatched huts was held to be a building within the meaning of this section. 1887 P. R. No. 57, 1903 P. R. No. 7. See S. 442 I. P. C.

A wilful act is punishable under this section; a rash and negligent act under S. 285. Ratanlal 126, 8 W. R. Cr. 30.

It is necessary to prove in a charge of arson, that the accused were, from inception or at any stage of the offence,

actuated by common motive to set fire to the house or knew that the act would probably be committed. Mere presence does not raise a presumption against them. Unless they did something to aid and assist the Principal culprit. 22 Cr. L. J. 267, 60 I. C 667.

S. 437 I. P. C :—Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

Evidence :—Prove points (1) to (4) as for S. 426, and further—(5) that accused committed or attempted to commit mischief by fire or any explosive substance. (6) that the mischief was committed in respect of a decked vessel, or a vessel of burden of twenty tons or upwards. (7) that the accused, when committing or attempting to commit mischief, intended or knew, that he was likely, to destroy or render unsafe such vessel.

That the accused when committing mischief intended, or knew that he was likely, to render unsafe that vessel.

Fishing boats, ferry boats, canoes, &c., do not come under the section.

S. 438 I. P. C :—Punishment for mischief described in S. 437 committed by fire or explosive substance.

S. 439 I. P. C :—Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

Evidence :—Prove (1) that the property in question was contained in a vessel. (2) that accused ran such vessel aground or ashore. (3) that he did so intentionally. (4) that he intended thereby—(a) to commit theft on the property so contained therein, or (b) to dishonestly misappropriate the same; or (c) that such theft or misappropriation thereof might be committed.

The gist of the offence lies in intention, not knowledge. A man may run a leaky vessel ashore, though he knows full well the people there are likely to commit theft of the cargo. He is not liable if his intention was to prevent the sinking of the vessel.

S. 440 I. P. C :—Mischief committed after preparation made for causing death or hurt.

Evidence :—Prove points (1) to (4) as for S. 426, and further (5) that when such mischief was committed, accused had made preparation for causing death, hurt, or wrongful restraint, or fear thereof.

S. 441 I. P. C :—"Criminal trespass."

Criminal trespass defined.

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult, or annoy any person in possession of such property.

Or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

The offence of criminal trespass is only committed where some criminal intent is present in the mind of the person charged. 16 C. W. N. 1097; 13 Cr. L. J. 783, 17 I. C. 415. See also 54 I. C. 620.

The fact that the result of the accused's act was annoyance will not render it an offence unless the intention of the accused was to annoy. 6 M. L. T. 262, 10 Cr. L. J. 384. 3 I. C. 828. Ref. 19 M. 240, 27 A. 298.

Mere knowledge that annoyance is possible is not enough. 6 C. 579, Foll. 19 M 240; not followed 35 M. 186.

The essence of the crime of criminal trespass is the intention, and it is this which renders an entry or remaining, with or without consent, criminal.

To maintain an action for trespass the complainant must be in actual possession at the time of the trespass, a mere title to the land would not do, there must be an actual, and not merely constructive possession. 19 Cr. L. J. 761; 41 I. C. 137.

A claim of right to possession which is made in good faith is a claim of right in law, and an entry or remaining solely, in the exercise of such a claim does not constitute criminal

trespass—though it is a civil injury. 11 A. 101, 11 M. 30, 1 Weir 525, 516, 11 Cr. L. J. 695. See also 9 Cr. L. J. 561; 19 Cr. L. J. 629; 45 I. C. 677.

A builds a hut on some ground which is in dispute between him and B (13 C. L. R. 212), or enters into a dwelling house of a joint Hindu family, of which he is a member (6 B. L. 80, 15 W. R. Cr. 6), such conduct of itself is not criminal trespass.

If the entry is not to commit an offence or to intimidate or annoy any person it is not criminal trespass 5 M. 382, 1 weir. 521, 27 A. 298. An intention to commit an act merely unlawful will not render the accompanying trespass criminal. 11 Cr. L. J. 83, 6 P. L. R. 308.

A enters a Local Fund market through the fence, instead of the gate in order to evade payment of the toll. This is not criminal trespass. 5 M. 382, see also 6 B. H. C. R. Cr. 6, 18 W. R. Cr. 25, 6 M. H C. R. App. 19, 11 Cr. L. J. 57.

An entry which was originally lawful may become unlawful when the person who was authorized to enter for one pnrpose proceeds to employ this opportunity for the commission of an offence. 1 Weir. 528. If a man armed with a warrant of delivery enters the wrong premises, he may not be guilty; but if he, after the mistake has been pointed out by the occupier, persists in staying there, abusing and insulting the latter, he would be liable. 2 O. C. 65. If a guest, who was invited to an entertainment were to secrete himself in the house when it was over, for the purpose of committing theft, this would be an "unlawful remaining in the house with intent to commit an offence," and, therefore, would be "house trespass."

Where a person enters on land in the possession of another in the exercise of a bona fide claim of right without intending to intimidate, insult or annoy the person in possession or to commit an offence then although he has no right to the land, he cannot be convicted of criminal trespass. 48 C. 1143,

20 C. W. N. 1071, 17 Cr. L. J. 339, 35 I. C. 515. A trespass on the land of the complainant to forcibly prevent the latter from harvesting the crops sown and cultivated by the accused is not an offence within S. 447 1915 M. W. N 275, 16 Cr. L. J. 271, 28 I. C. 159. Trespass includes the mischief which the trespasser commits after entering on the land. 23 M. L. J. 618, 12 M. L. T. 538, 1912 M. W. N 1219, 17 I. C. 605. An entry on land in another's possession, solely in order to assert a right in the land does not constitute criminal trespass within S. 447. The intention to intimidate insult or annoy, or to commit an offence must be distinctly found. 1912 M. W. N. 395, 13 Cr. L. J. 477, 15 I. C. 317. The Amin executing a delivery warrant issued to him, cannot be convicted of criminal trespass, even though the delivery warrant was in excess of the decree in the suit and the amin was shown the decree. 10 L. W. 12, 21 Cr. L. J. 559, 51 I. C. 847. Where the accused committed house trespass and annoyed the tenant of the house, a conviction based on a complaint by the owner of the house is not bad as the expression 'any person in possession' in S. 441, does not mean only 'a complainant in possession.' 33 C. L. J. 118, 25 C. W. N. 425, 22 Cr. L. J. 494, 62 I. C. 190.

In the case of criminal trespass, the right of private defence continues so long as the trespass continues, and is controlled by S. 99 I. P. C. It extends to causing death in case the act of the trespasser causes a reasonable apprehension that death or grievous hurt may result. 22 Cr. L. J. 177, 60 I. C. 33.

S. 442 I. P. C:—House-trespass.

House-trespass defined.

Definition:—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property is said to commit "house trespass."

Explanation:—The introduction of any part of the criminal trespasser's body is 'entering' sufficient to constitute house-trespass.

Building.

A mere surrrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon, does not amount to house-trespass. 1 Weir. 523. The courtyard of an uninhabited house (2 A. W. N. 224), a compound (4 L. B. R. 24), and a cattlefold or pen with a thorn-hedge round it (P. R. No. 57 of 1887) are held not to be buildings.

An entry or remaining upon the roof of a house or under a house does not constitute house-trespass, or house-breaking. 6 Cr. L. J. 134, 1 Weir. 435.

"Place for the custody of property" i.e., a building used for such purpose, and not a mere temporary structure open at the top, or brake-van of a train, or railway carriage or cattle pen. See rule M. H. C. 1865, 1 Weir. 436, 11 Cr. L. J. 420, 6 P. L. R. 441.

To put in a hand or finger or to put a foot over the threshold is a sufficient entry.

Human dwelling.

The essence of a human dwelling is that it should furnish a residence for the owner of the premises, or his family, or servants, or some other person who occupies for that purpose, with his permission.

A court yard partly surrounded on the front by a mud wall with no roof over it, nor any door or gateway, is not a building or house within S. 442 I. P. C. 20 Cr. L. J. 249, 49 I. C. 864, 11 P. W. R. Cr. 1919. A thatch hut built for residence is a building used as a human dwelling within the meaning of S. 442. 30 L. J. 493, 17 Cr. L. J. 536, 36 I. C. 58. See also S. 436 I. P. C.

It is not necessary that the residence should be continuous. If a man has several residences, and passes from one to another; or if he leaves his residence, for some temporary purpose, as business or a journey, it is still his dwelling house, though no one is left behind.

If, however, the owner has quitted his residence without any intention of returning, and has left none of his family or servants behind, it has ceased to be his dwelling house.

If, a man has bought or hired a house as a residence, but has not yet begun to live in it himself, or any of his family or servants, this is not his dwelling house, though he has put his furniture or goods into it.

The term dwelling house includes not only that portion of the premises which is used for purpose of habitation, but also the out-houses, if they are part of the principal building and used with it.

If there be any doubt whether the building is used for a human dwelling or for the custody of property, the difficulty may be solved by framing two charges, in the alternative.

S. 443 I. P. C :—Lurking house trespass.

There are three aggravated forms of trespass. (1) House-trespass, this is aggravated on account of the nature of the property concerned; (2) Lurking house trespass, this is aggravated by reason of the manner of entering or leaving the property, and (3) House-breaking, this is aggravated by reason of the means of entering or remaining, and by reason of the particular intention of the trespasser.

A house-trespass along with precautions to conceal such from some person who has a right to exclude or eject the trespasser is a lurking house-trespass.

Lurking house trespass and house breaking, distinguished.

In lurking house trespass the element is the precaution to conceal the house-trespass and in house-breaking it is mode of entering or leaving.

S. 444 I. P. C ,—Lurking house-trespass by night.

Under this section the time of the entry aggravates the offence.

S. 445 I. P. C:—House breaking.

It is House-trespass plus an entry or leaving in any one of six specified ways mentioned in the section. In addition,

the leaving in one of these ways must follow an entry or remaining on the premises with intent to commit an offence.

The opening is not confined to the external parts of a house, but may be of an inner door after the offender has entered by means of a door which he has found open.

An entry through a window not intended for human entrance will amount to house breaking, ill (c) of S. 445 I. P. C.

S. 446 I. P. C:—House-breaking by night.

The element of time, turns the offence into 'house-breaking by night'

S. 447 I. P. C:—Punishment for criminal trespass.

Evidence:—Prove (1) that the complainant had possession of property in question, (2) that the accused entered into or upon the property; or after having lawfully entered unlawfully remained there, (3) that he so entered or remained there with the intention, (a) to commit an offence; or (b) to intimidate, insult or annoy the person in possession.

The proof of the intentions mentioned in S. 441 need not be direct. It will be enough if it is proved like any other fact by the evidence of conduct and of surrounding circumstances. 22 C. 391, 406.

S. 448 I. P. C:—Punishment for house trespass.

Evidence:—Prove (1) that accused committed criminal trespass, (2) that such criminal trespass was committed by entering into, or remaining in, a building, tent, or vessel, (3) that such building, tent, or vessel was used as a human dwelling or as a place for worship, or as a place for the custody of property.

To support a conviction under this section, some one or other of the intents mentioned in S. 441 must be expressly found and must not be left to inference. 1 Weir. 524. See also 12 Cr. L. J. 148; 9 I. C. 895.

A mortgagee of a house, locking it against a lessee of it, is not guilty of criminal trespass. 20 Cr. L. J. 354, 50 I. C.

834. It is not criminal trespass to seize property for attachment in pursuance of a decree of Civil Court. 15 A. L. J. 808 19 Cr. L. J. 46, 42 I. C. 1006.

S. 449 I. P. C :—House-trespass in order to commit offence punishable with death.

Evidence :—Prove (1) that accused committed house-trespass, (2) that the same was committed in order to commit an offence punishable with death.

S. 450 I. P. C :—House-trespass in order to commit offence punishable with transportation for life.

Evidence :—Prove (1) that accused committed house-trespass, (2) that the same was committed in order to commit an offence punishable with transportation for life.

A charge under Ss. 449, 450 or 451, must allege and prove an intent to commit an offence punishable in the degrees mentioned therein. Otherwise nothing but the offence of house-trespass remains. 16 W. R. Cr. 53, 63.

S. 451 I. P. C :—House-trespass in order to commit offence punishable with imprisonment.

Evidence :—Prove (1) that accused committed house-trespass, (2) that the same was committed in order to commit theft, or an offence punishable with imprisonment.

It is necessary that the court should be in a position to say which specific offence the accused intended to commit; it is sufficient if the evidence leaves no room for reasonable doubt that the accused intended to commit an offence. 1 Weir 533. See also 19 A. 74, 22 C. 391, 10 Cr. L. J. 410, 17 A. L. J. 800; 20 Cr. L. J. 347; 50 I. C. 827.

Adultery being an offence, entry with a view to commit adultery is punishable under this section. 23 A. 82, 8 M. H., C. R. Appx. 6, 1 Weir 531, provided the house be in the possession of the husband and the entry is proved to be without his consent or connivance. 15 Cr. L. J. 351, 23 I. C. 703. If the entry be with a view to carry on a clandestine

intrigue with a widow or unmarried girl in the house, it would be no offence. 19 M. 240. 1 Weir. 536, 2 Cr. L. J. 420. When the entry was found to be for purposes of intrigue with a woman whether she had an husband or not, the High court held an intent to insult or annoy may be presumed to support a conviction. 1 Weir. 535. Where the woman happened to be the complainant's widowed mother the High court declined to raise any such presumption. 1 Weir 537. When the complainant suggested the intent was theft, and the Magistrate guessed without any evidence it must have been for an intrigue with a woman, and there was not any evidence the woman was in the house at the time, or was likely to be found there, a finding that entry must have been to commit some offence punishable with imprisonment was held unsustainable. 7 Cr. L. J. 230, 1907 P. W. R. Cr. 29, 88. Where a person enters the house of another at night to commit adultery with his wife, he is guilty under the section and if it is found that the husband was in the legitimate pursuit of his occupation, he cannot be presumed to have connived or consented to the immorality. 22 Cr. L. J. 266; 60 I. C. 666.

Where in K's absence from home the accused entered the house with his wife's consent in order to commit adultery with her, held, that he was guilty of an offence under the section. 22 Cr. L. J. 118, 59 I. C. 550.

S. 452 I. P. C :—House-trespass after preparation for hurt, assault or wrongful restraint.

Evidence :—Prove (1) that accused committed house-trespass, (2) that the same was committed after making preparation for causing hurt or for assaulting, or for wrongfully restraining, some person; or for putting some person in fear of hurt, assault, or wrongful restraint.

Where a man went with a forged warrant of arrest into a house, and took away one of the inmates against his will under the authority of such warrant, he was held guilty of

house-trespass, by putting such person in fear of wrongful restraint under this section. 12 W. R. 33.

Where the accused entered the complainant's house for the purpose of beating his (accused's) wife, who had taken refuge in it, it was held that the beating not being justified that is, lawful, the entry amounted to criminal trespass, and a conviction under this section was good. 1882 Weir. 329.

S. 453 I. P. C:—Punishment for lurking house-trespass or house-breaking.

Evidence:—For lurking house-trespass.

Prove (1) that accused committed house-trespass, (2) that the accused took precautions to conceal the same.

For house breaking.

Prove (1) that accused committed house-trespass, (2) that he effected his entrance into the house or any part of it in any of the six ways mentioned in S. 445; or if he was in the house or any part of it for the purpose of committing an offence, he quitted it in any of those six ways.

In all "house-breaking" there must be "house-trespass" and in all "house-trespass" there must be "criminal trespass". Unless therefore the intent necessary to prove the offence of criminal-trespass is present, the offence of house-breaking or house-trespass cannot be committed.

S. 454 I. P. C:—Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

Evidence:—Prove (1) that accused committed lurking house-trespass or house-breaking, (2) that he did so in order to commit an offence punishable with imprisonment.

If theft is actually committed then there are two offences, one under S. 380 and the other under this section or S. 457, as the case may be.

These offences are "separable offences" for the purpose of S. 71 I. P. C.

Separable offences which come within the provisions of 71 I. P. C., are not distinct offences witnin the meaning of S. 35 Cr. P. C. S. 35 (expl) Cr. P. C.

By a "separable offence" is meant, one which includes in itself another or other offences.

The offender cannot be punished with more than one of the punishments provided in sections in question. 23 B. 703.

455 I. P. C:—Lurking house-trespass or house-breaking after preparation to cause hurt, assault or wrongful restraint.

Evidence:—Prove (1) that the accused committed lurking house-trespass or house-breaking, (2) that he did so after making preparation for causing hurt, or assaulting, or wrongfully restraining some person, or for putting some person in fear of hurt, assault, or wrongful restraint.

456 I. P. C.—Punishment for lurking house-trespass or house-breaking by night.

Evidence:—For lurking house-trespass by night.

Prove (1) that the accused committed lurking house-trespass, (2) that the same was committed after sunset and before sunrise.

For house-breaking at night.

Prove (1) that accused committed house-breaking, (2) that the same was committed after sunset and before sunrise.

The splitting up of one aggravated offence into separate minor offences is prohibitted, e. g., a conviction for lurking house-trespass and theft under S. 456 and 380, instead of lurking house-trespass in order to commit theft under S. 457. 6 W. R. 39, 2 A. 644.

Various elements of criminal trespass must be first made out. 2 M. 30. Running into a house to evade being arrested cannot be treated as an act of entry into the house with an

intent to commit an offence, the accused is not liable under this section. 1891 A. W. N. 64.

If the accused pleads the intention with which he entered was an innocent one, the onus is on him to make good the plea, as it is a matter specially within his knowledge. 29 A. 46, 4 Cr. L. J. 291; 37 A. 395; 16 Cr. L. J. 435, 13 A. L. J. 625; 29 I. C. 67.

Where a person is found lurking at night inside another's house, a perfect stranger to him without any apparent business, the court can infer a guilty intention under S. 441. In a case of this sort the court should not overlook S. 509 I. P. C. 16 A. L. J. 157, 19 Cr. L. J. 243, 44 I. C. 35.

S. 457 I. P. C:—Lurking house trespass or house-breaking by night in order to commit offence punishable with imprisonment.

Evidence:—Prove (1) that accused committed lurking house-trespass by night, or house-breaking by night. (2) that the same was committed to commit theft, or an offence punishable with imprisonment.

Where the door of a shop was found broken open, it was held that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night. 4 W. R. 19.

A person was charged under 457-380. There was however no direct evidence to prove house-breaking and theft but the accused after some days surrendered the stolen goods. He is guilty of an offence under S. 411 and not under S. 457-380 I. P. C. 17 Cr. L. J. 179, 33 I. C. 819.

S. 458 I. P. C:—Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.

Evidence:—Prove (1) that accused committed lurking house-trespass by night or house-breaking by night. (2) that he did as above after having made preparation for causing

hurt, or for assaultiug, or for wrongfully restraining some person; or for putting some one in fear of hurt, assault, or wrongful restraint.

S. 459 I. P. C:—Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

Evidence:—Prove (1) that accused committed lurking house-trespass or house breaking. (2) that he caused grievous hurt, or attempted to cause death or grievous hurt, to some person. (3) that he did as above whilst engaged in committing lurking house-trespass or house breaking.

S. 460 I. P. C:—All persons jointly concerned in lurking house-trespass or house breaking by night are punishable where death or grievous hurt is caused by one of them.

Evidence:—Prove (1) that accused committed lurking house-trespass by night, or house-breaking by night, (2) that he caused, or attempted to cause, death or grievous hurt. (3) that he did as above whilst engaged in committing lurking house-trespass by night or house breaking by night.

An armed person breaking into a house to commit theft and stabbing his pursuers to death, is not guilty under S. 460 but under Ss. 326, 457 and 458 I. P. C. 18 Cr. L. J. 350, 38 I. C. 734.

S. 461 I. P. C:—Dishonestly breaking open receptacle containing property.

Evidence:—Prove (1) that the receptacle was closed or fastened. (2) that it contained property, or that the accused believed that it contained property. (3) that the accused broke open or unfastened it. (4) that he did so dishonestly, or with intent to commit mischief.

The section applies not only to rooms, but to a part of a room or even a box such as the brake-van of a train. 1 Weir 436. Opening a coffin which has been nailed down is not an offence, as the corpse is not a property. 25 A. 129.

Double convictions under this section and S. 380 have been upheld. 1896 A. W. N. 194, See 10 A. 146, 10 B. 493.

S. 462 I. P. C :—Punishment for same offence when committed by person entrusted with custody.

Evidence:—Prove points (1) to (4) as for S. 461; and (5) that the accused was entrusted with receptacle. (6) that he was so entrusted with it, in a closed or unfastened state. (7) that he had no authority to open the same.

Offences relating to documents and to trade or property marks.

Offences Ss. 463 to 489 D. I. P. C.

S. 463 I. P. C :—Forgery.

Forgery defined.

Definition :—Whoever makes any false document, or part of a document, with intent to cause damage, or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

It is made up of two parts, viz., (1) the making of a false document; (2) with intent to injure or defraud, in one or other of the five ways specified in the section.

S. 464 I. P. C :—Making a false document.

There are three ways in which a false document is made. (1) By making signing, sealing or executing a document; (2) by alteration of a document; (3) by causing a person who is innocent of the contents, or nature of the alteration of a document, to sign, seal, execute, or alter it.

In whichever way the document is made it must be made dishonestly or fraudulently. In addition to this dishonest or fraudulent intention must be accompanied by an intention to cause it to be believed that one or more of these things was done (1) by a person by whom they were not done, or (2) at a time when they were not done, to the knowledge of the maker of the document. 1 Cr. L. J. 124, 8 C. W. N. 278.

A person who makes a "copy" of a testimonial of qualifications or character, which never existed and purports to make it himself, does not make a false document, though the

use of such a document may constitute cheating. 4 Cr. L. J. 355, 11 Cr. L. J. 401. See also 20 M. L. J. R. 534, 6. M. L. T. 428.

The making of a false document with intent merely to conceal a former fraud by deceiving the person defrauded can not amount to forgery. The language of the section clearly contemplates an injury or fraud in the future, i. e, as a consequence of the false document. 13 C 349, Dist. 35 C 450. Foll. 22 B. 768. 5 A. 221, 8 A 653, see also 6 B. L. R. 94, 1 Cr. L. J. 105.

The intention in forgery need not necessarily have reference to a future injury or fraud, and that if the intention is to conceal a fraudulent act which has been previously committed, the intention cannot be otherwise than fraudulent. 14 Cr. L. J. 518 see also 22 C. 813, 35 C. 450 11 M. 411, 1 Weir 549, 554 dissenting from 11 Cr. L. J. R. 185. A false document must be distinguished from a document containing falsehoods. No amount of lies in a document can render a document a Forgery even though they may be written with intent to injure. 22 M. 90. A false document is an instrument which purports to be that which it is not. 1 C. C. R. 200.

S. 465 I. P. C :—Punishment for forgery.

Evidence :—Prove (1) that the accused made, signed, sealed, or executed the document, or any part of it, or made a mark denoting execution. (2) that he did as in (1) with the intention of causing it to be believed that such document was made, signed, sealed, or executed by, or by the authority of another, person or that it was executed at a particular time. (3) that such another person did not so execute, or did not authorize such execution, or that such execution was not at that particular time. (4) that the accused knew that it was not so executed, either by such person, or by the authority of such person, or at that time. (5) that he did as in (1) and (2) dishonestly or fraudulently, or with intent (a) to cause damage or injury, or (b) to support any claim or title, or (c) to cause a person to

part with property, or (d) to cause any person to enter into any express or implied contract, or (e) to commit a fraud, or that a fraud might be committed. Or prove (1) the making or executing of the document by some one. (2) that the accused afterwards altered such document by cancellation or otherwise. (3) that such alteration was in material part of the document. (4) that the accused had no lawful authority to make such alteration. (5) that he did so dishonestly, or fraudulently, or with intent, &c., as in (5) above.

Or prove (1) that the accused caused a person to sign, seal, execute, or alter the document. (2) that such person when doing as in (1) was ignorant of the contents of the document, or of the nature of the alteration. (3) that such ignorance was due to (a) unsoundness of mind, or (b) intoxication, or (c) a deception practised upon him. (4) that the accused knew of such ignorance, and the reason thereof. (5) that he, when causing such person to sign, &c., acted dishonestly or fraudulently, or with intent, &c., as in (5) above.

If several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals.

A person taking an active part in the preparation of a document, but no part in the forgery of the name of the executant, does not commit forgery; but simply abets the offence. 25 C. 207.

The simple making of a false document constitutes forgery. 10 W. R. 61.

The 'making' of a document, or part of a document, does not mean 'writing' or 'printing' it, but signing or otherwise executing it. The fact that the word 'makes' is used in the section in conjunction with the words 'signs' 'seals' or 'executes', or makes any 'mark' denoting the execution &c., seems very clearly to denote that this is its true meaning. 7 C. 352 at 355.

The making does not consist in writing it without doing anything further towards its execution. (1892—1896) U. B. R. 279. It is not necessary that the document should be legal evidence of the matter expressed in it. It is sufficient if it was intended to be evidence. That is, if it was put forward by the person making or using it, as containing statements upon which the person to whom it is submitted might and ought rely. 2 B. L. R. 12, 10 W. R. Cr. 61. No forgery could be committed by a person who, with the authority of another, signs the name of that other. Thus where a son signed his father's name, and there was no evidence that he acted fraudulently and without the father's authority it was held no offence was committed. 4 L. B. R. 45, 6 Cr. L. J. 283. Where the accused personated a student at an examination, in collusion with him, and signed his name to an examination paper (12 M, 151), where a decree-holder signed a vakalat in the name of his co-decree-holders and instructed the vakil to enter up a certificate of satisfaction of the entire decree (6 W. R. Cr. 78) are held to be forgeries.

It is not forgery for a man to make a deed which contains a false statement, such as a recital that he was an adopted son of some one, even though the recital is made as a self-serving piece of evidence to bolster up a false claim in future. 32 M. 90, 4 M. L. T. 463, 9 Cr. L. J. 85. Mere signing of a telegram to another's name without any intention to cause injury to him and actually causing no injury, will not amount to forgery though the signature was without authority. 16 Cr. L. J. 76, 26 I. C. 668. Mere antidating a will does not amount to forgery in the absence of other circumstances. 17 Cr. L. J. 540, 36 I. C. 588.

A conviction for forgery cannot be based on the mere similarity of the handwriting of the accused without other evidence of complicity. 20 Cr. L. J. 534, 51 I. C. 774.

An insolvent who uses a forged document with intent to support his claim to be declared insolvent is guilty under S. 464. 43 A 225, 18 A. L. J. 1137, 22 Cr. L. J. 56, 59 I. C. 200.

S. 466 I. P. C:—Forgery of record of court or of public register &c.

Evidence:—Prove (1) that accused forged the document. (2) that the document forged is one of the kinds specified in this section.

S. 467 I. P. C:—Forgery of valuable security or will &c,

Evidence:—Prove (1) that accused committed forgery. (2) that the document forged is one of the kinds mentioned in this section.

An unregistered document though not a valuable security until the registration is completed still purports to be a valuable security within the meaning of this section. 25 C. 207, 12 M. 148.

Forgery may be committed of a promissory note on unstamped paper even though a statute prohibits the stamp to be affixed afterwards.

A fraudulent alteration of a Collectorate challan falls under this section. 1864 W. R. Cr. 22. A document which has been held to be valuable security within the meaning of S. 30 I. P. C., falls within the scope of this section. 17 Cr. L. J. 205, 34 I. C. 517. Where a person is convicted under S. 467, I. P. C., for having a forged promissory note, a further conviction and sentence under S. 471 for using that note as genuine is not illegal in the course of the same trial. 17 Cr. L. J. 73, 32 I. C. 665.

S. 468 I. P. C:—Forgery for purpose of cheating.

Evidence:—Prove (1) that the document is forgery. (2) that the accused forged the document. (3) that he did as above intending that the forged document would be used for the purpose of cheating.

The intention of the forger may be fairly inferred in most cases from the contents of the forged documents. M & M 418.

If the cheating is complete, and the subsequent forgery is for the purpose of concealing that offence this section does not apply. P. R. No. 15 of 1876.

Forgery of a school attendence register, for the purpose of obtaining a Government grant, was held to be punishable under this section. 1885 Weir 336. Where account books were falsified with a view to induce accused's master to deliver property, it was held, to be an offence within this section. 18 W. R. Cr. 46.

A process server filing a forged attachi to explain the delay in returning the process, is guilty under Ss. 468 and 471 I. P. C. 42 M 558, 36 M L. J. 201, 20 Cr. L. J. 287, 25 M. L. T. 345, 1919 M. W. N. 433. 50 I. C. 175. See also 11 M. 411, 35 C. 450, 8 A. 653.

S. 469 I. P. C :—Forgery for purpose of harming reputation.

Evidence:—Prove (1) that the document in question is a forgery. (2) that the accused forged it. (3) that he did so intending that the document forged would harm the reputation of some one, or knew that it was likely to be used for that purpose.

The expression 'to harm the reputation' is advisedly used rather than the word defame so as to exclude the operation of the exception to S. 499.

A person who forged a draft petition, with the intention of using it as evidence, and which contained false statements calculated to injure the reputation of a person, was held guilty of an offence under this section. 10 W. R. Cr. 61. Where the court finds that a document is a forgery and that it has been used by the accused in a civil suit but there is no evidence the accused could not be convicted of an offence under the section but ought to be convicted under S. 471. 7 Cr. L. R. 254.

S. 470 I. P. C :—Forged document.

Definition :—A false documtnt made wholly or in part by forgery is designated "a forged document,"

The copy of a document alleged to be false does not come within the definition of a false document and a conviction based on such a copy is bad. 11 Cr. L. J, R. 401; 6 I. C. 776; 7 M. L. T. 428; 20 M. L. J. 534.

S. 471 I. P. C:—Using as genuine a forged document.

Evidence:—Prove (1) that the document was a forged one, (2) that the accused used such document, (3) that he used it as a genuine one, (4) that he knew, or had reason to believe, it was a forged one, (5) that he used it dishonestly or fraudulently.

A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of it. 6 W. R. 41. Where a person took copies of a forged document and put these copies forward as evidence in support of title, it was held that this was a use by him of the forged document. 28 A. 402. Where the accused, a pleader's clerk, altered the date in the copy of a decree in order to hide his fault in not filing the execution petition in time and filed it with the copy of the altered decree, it was held that the accused was not guilty under S. 467, the copy of the decree not being a valuable security, but was guilty of the offences under S. 193 and 471. 1 Weir. 551.

"Uses":—It must be proved that it was the accused himself who used the document. 1 Weir. 550.

To constitute a use within the meaning of the section it is not necessary that the document should be used as evidence in a court of justice or used for the purpose of obtaining money. It is enough if it is used in order that it may ultimately appear in evidence, or be used dishonestly or fraudulently. 39 C. 463, 13 Cr. L. J. R. 201, 449, 14 I. C. 201 Fell, 16 Cr. L. J. 309, 28 I. C. 645, 17 B. L. R. 222; 25 M. L. T. 18, 49 I. C. 492, 20 Cr. L. J. 172.

The mere filing of a document in Court without tendering the same in evidence does not constitute a use of it within the section. 35 C. 820, 36 M. 387, 392, 13 Cr. L. J. R. 46,

though it may amount to an attempt, if it is filed with the intention of relying on it at the trial of a case. 13 Cr. L. J. R. 6; 13 I. C. 99. See also 13 Cr. L. J. 19; 13 I. C. 211.

The presentation of a forged document for registration, and obtaining registration, would be "using" it within the meaning of S. 471. 11 W. R. 15.

The fact that the use of the forged document was unnecessary, and that the party had a good title without it, is no defence. 9, C. 53. A forger who himself uses the forged document as genuine cannot be punished for both the forgery, and for the use under this section. 23 C. 84, 14 Cr. L. J. R. 183. Nor can the abetter of the forgery be convicted under this section. 15 Cr. L. J. R. 538. Nor can there be double conviction and sentence under Ss. 471 and 474. 17 C. W. N. 94, 13 Cr. L. J. 449, 15 I. C. 81. The two may be joined in the alternative but not cumulatively. See 14 Cr. L. J. 183, 19 I. C. 183.

A series of similar transactions in which forgeries were committed can be used as evidence of intention and not as evidence of the forgery. But it is doubtful whether the mere filing of a copy of a forged document is a user of it. 43 C. 783, 20 C. W. N. 262, 17 Cr. L. J. 130, 33 I. C. 306.

Filing of a forged document along with plaint amounts to a 'user' of the document within S. 471. 19 Cr. L. J. 709, 46 I. C. 293.

Where a person altered the words "one tube of morphia" in a medical certificate into 4 tubes of morphia and thereby obtained from the Chemist four tubes, held that he was guilty under S. 471. 22 Cr. L. J. 681, 63 I, C. 617.

A person giving forged document to the investigating officer during the Police investigation and thus causing that officer to do something which otherwise he would not have done, is guilty of having used forged document within S. 471. 22 Cr. L. J. 274, 60 I. C. 674.

S. 472 I. P. C:—Making or possessing counterfeit seal, &c., with intent to commit forgery punishable under S. 467.

Evidence:—Prove (1) that accused made or counterfeited the seal, &c, or that he had such seal, &c., in his possession, and that he knew it to be counterfeit, (2) that such seal &c., was made in order to produce impressions, (3) that he intended to use such seal &c., for the purpose of committing forgery, (4) that such forgery was punishable under S. 467.

Ss. 235, 255 and 256 are akin to this section and S. 473 I. P. C.

Counterfeit seals and forged documents were found in the prisoner's possession; and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. 2 W. R. 5.

If several seals are found, the possession of each seal would constitute a separate offence. 13 W. R. Cr. 16.

S. 473 I. P. C:—Making or possessing counterfeit seal &c., with intent to commit forgery punishable otherwise.

Evidence:—Prove points (1) to (3) as for S. 472; and further, (4) that such forgery was punishable under any section of chapter (XVIII).

S. 474 I. P. C:—Having possession of document described in S. 466 or 467 knowing it it to be forged and intending to use it as genuine.

Evidence:—Prove (1) that the document was a forged one, (2) that the accused had it in his possession, (3) that he knew it to be forged when he had it in his possession, (4) that he intended that it should be used as a genuine document, (5) that he intended as above dishonestly or fradulently. Prove also whether the forged document is one of the description mentioned in S. 466 or 467. 16 B. 165.

The guilty intention must be proved, not inferred. 1864 W. R. 12. Where a person took a forged document into a court in connection with a case, but did not actually use it, although he intended to do so, if necessary, he was held guilty of an offence under this section. 8 W. R. 11. The intention can seldom be directly proved, but given a forged document capable of being fraudulently used, in the possession of a person who is interested in making a fraudulent use of it, then the fraudulent intention can be presumed.

S. 475 I. P. C :—Counterfeiting device or mark used for authenticating documents described in S. 467, or possessing counterfeit marked material.

Evidence :—Prove (1) that the accused counterfeited upon or in the substance of any material, a device or mark. (2) that such device or mark is used for the purpose of authenticating any document described in S. 467. (3) that the accused intended to use such device or mark for the purpose of giving the appearance of authenticity to some document. (4) that such document was forged or was thereafter to be forged. Or prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the device or mark was counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document prescribed in S. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents, either then forged or thereafter to be forged.

As to the admissibility in evidence of other forged documents. See 16 B. 165, 15 B. 189; 11 B. H. C. 90. This section supplements the provisions of S. 472. The document must be of a nature mentioned in S. 467. 15 W. R. 19.

The commencement of the forgery of bank notes and other similar securities, where it has proceeded to the length which is described in this section, is treated as a substantive

offence and punished. Also the possession of the prepared material, &c., is punished. M & M 421.

S. 476 I. P. C :—Counterfeiting a device or mark used for authenticating documents other than those described in S. 467, or possessing counterfeit marked material.

Evidence :—Prove the same points as for S. 475, showing in (2) that such device or mark is used for the purpose of authenticating any document other than the document described in S. 467.

S. 477 I. P. C :—Fraudulent cancellation, destruction, &c., of will, authority to adopt, or valuable security.

Evidence :—Prove (1) that the document in question is or purports to be a will, or an authority to adopt, or a valuable security. (2) that accused has cancelled, destroyed, defaced, or secreted the same or has attempted to do so, or that he has committed mischief in respect of it. (3) that he did as above fraudulently or dishonestly or to cause damage or injury to the public, or to some person.

A person tearing to pieces a registered conveyance was held guilty under this section although the document was invalid for want of consideration. 1 Weir. 554.

Tearing up of a pattah (3 W. R. 38), a promissory note (12 M. 54), or a rough account showing a liability on the part of the prisoner (12 M. 148, 154), amounts to the destruction of a valuable security, even though the document may not be stamped, and is therefore inadmissible to enforce any legal claim.

S. 477 (A) I. P. C :—Falsification of accounts.

Evidence :—Prove (1) that the accused destroyed, altered, mutilated, or falsified the book, paper, writing, valuable security, or account in question. (2) that accused was a clerk, officer, or servant, or acted in any such capacity. (3) that the book, paper &c., belonged to or was in the possession of his employer, or had been received by him for or on behalf

of his employer. (4) that accused did as in (1) wilfully and with intent to defraud. Or prove (1) that accused made or abetted the making of any false entry in or omitted or altered; or abetted the omission or alteration of some material particular from or in such book, paper, &c., (2), (3) and (4) as above.

It is necessary to show not merely false entries in the books of accounts, but that such false entries were made with intent to defraud. An alteration of accounts though made after embezzlement would come within the section if it was part of a scheme to defraud. 1 Weir. 554, 35 C. 450, 11 Cr. L. J. 185. But not otherwise. 36 C, 955. An offence under this section can be tried otherwise than at the place where the document was fabricated. 11 Cr. L. J. 53, 6 A. L. J. 977. A charge of having wilfully altered and mutilated certain accounts between two specified years, on the evidence showing that the subject matter of the charge was practically five series of entries in certain sets of books, is bad, and the defect cannot be remedied by S. 537 Cr. P. C. 32 A. 57.

The falsification of books to conceal an embezzlement or to assist in the completion of an offence of criminal breach of trust is an offence under S. 477 A. 11 Cr. L. J. 185, 4 I. C. 1089. Where the managing Director and the manager of the head office falsified the books of the bank so as to show a sham profit of Rs. 3,000. and completed the falsification by the first manufacturing pro-notes in order to give to the falsification balance sheet and account books an appearance of correctness both of them are guilty of an offence under S. 477 A. 16 Cr. L. J. 473, 29 I. C. 105. Accused who was a clerk of the certificate department was charged with having tampered with requisitions filed under the public demands recovery Act by replacing the stamps on those documents and on the accompanying vakalatnamas by others taken from other papers. Held, that the acts alleged did not come within S. 477 A. 47 C. 71, 23 C. W. N. 935, 30 C. L. J. 258, 54 I. C. 892.

Ss. 478 and 479 I. P. C., define a trade mark and property mark, respectively. Ss. 480 and 481 define the use of a false trade-mark or property-mark respectively.

"A mark"; i. e., any and every mark used for denoting that goods are the manufacture or merchandise of a particular person. 6 Cr. L. J. 392, 13 Bur. L. R. 336. A mark to be a trade-mark must be one that is used for the purpose specified. See 27 C. 776, 1 Cr. L. J. 581, 6 B. L. R. 512. The mark need not necessarily be on the goods themselves; it may be on the box or wrapper containing them. 29 M 569, 6 Cr. L. J. 75, 9 B. L. R. 732. The get-up of goods does not constitute a trade-mark. 1 Cr. L. J. 375, 2 L. B. R. 159, 10 Bur. L. J. 84. Books are "goods" within the meaning of the section. 26 C 232, 31 M. 512.

S. 482 I. P. C:—Punishment for using a false trade mark or property-mark.

Evidence:—For using false trade mark:—Prove (1) that accused marked the goods in question, or some case, package, or receptacle containing goods; or that he used some case, package, or receptacle bearing some mark. (2) that accused did as above in a manner reasonably calculated to cause it to be believed that the goods so marked, or the goods contained in the receptacle so marked, were the manufacture or merchandise of some person. (3) that such goods are not the manufacture or merchandise of that person.

For using false property mark:—Prove (1) that accused marked moveable property or goods in question, or some case, package, or receptacle containing moveable property or goods; or that he used some case, package, or receptacle bearing some mark. (2) that accused did as above in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or the property or goods contained in the receptacle so marked, belonged to some person. (3) that such property or goods do not belong to that person.

Onus:—Under this section the onus is not on the prosecution but on the person charged to prove that he acted innocently or that he acted without intent to defraud.

When a bonafide dispute exists between the parties as to the right to use a trade mark, action should be taken before a civil and not before a criminal court. 11 C. W. N. 887, see 40 C. 281, 1912 M. W. N. 85, 13 Cr. L. J. 175, 14 Cr. L. J. 68, 18 I. C. 404. Where the accused had used a false trade mark, but had no intent to defraud, he could not be convicted of an offence under S. 482. 16 A. L. J. 476, 19 Cr. L. J. 722, 46 I. C. 402. The owner of a trade mark cannot stand by, for several years while his trade mark is infringed continuously for a number of years and then bring a complaint in respect of recent infringement. 17 Cr. L. J. 438, 36 I. C. 168.

To issue a search warrant for the search of a man's house and for the production of all papers and books in it for the purpose of an inquiry as to whether he had used or sold articles with a counterfeit trade mark, is a gross perversion of law. 17 Cr. L. J. 543, 9 L. B. R. 45, 36 I. C. 591.

S. 483 I. P. C:—Counterfeiting a trade mark or property mark used by another.

Evidence:—Prove (1) that accused counterfeited the mark in question, (2) that such mark is the trade mark or property mark of some person, (3) that it was used so by that person.

Where the trade mark of the complainant's goods contains a name to which there might be no right of exclusive use, and another person using a similar trade mark with the same name is charged with selling goods marked with a counterfeit mark a material circumstance that has to be considered in the case is what the general effect of the trade mark adopted by the accused is and whether an incautious purchaser would be led to believe that he is buying the complainant's goods. 1 Weir 556.

S. 484 I. P. C:—Counterfeiting a mark used by a public servant.

Evidence:—Prove (1) that accused counterfeited the property mark, or some other mark, in question, (2) that such mark is used by some public servant, (3) that it was used to denote that the property had been manufactured by a particular person; or at a particular time or place; or that the property was of a particular quality or had passed through a particular office or was entitled to some exemption. Or prove—(1) that accused used the property mark, or some other mark in question (2) and (3) as above, (4) that he used the mark as genuine, (5) that when he used it he knew the same to be counterfeit.

S. 485 I. P. C:—Making or having in possession any instrument for counterfeiting a trade mark or property mark.

Evidence:—Prove (1) that accused made, or had in his possession, the die, plate, or instrument in question (2) that such die, &c., was for the purpose of counterfeiting a trade mark or property mark. Or prove—(1) that accused had in possession the trade mark or property mark in question. (2) that he possessed such trade mark or property mark for the purpose of denoting that goods bearing such mark were the manufacture or merchandise of some person, or that they belonged to some person, (3) that such goods were not the manufacture or merchandise of that person or that they did not belong to that person.

This section resembles Ss. 235, 256 and 472 I. P. C.

S. 486 I. P. C:—Selling goods marked with a counterfeit trade mark or property mark.

Evidence:—Prove (1) that accused sold, or exposed or had in possession for sale or some purpose of trade or manufacture, the goods or things in question, (2) that such goods or things had some trade mark or property mark affixed to, or impressed upon, them, or had some trade mark or property

mark affixed to, or impressed upon some case, package, or other receptacle in which they were contained, (3) that such trade mark or property mark was counterfeit.

The onus is not upon the complainant to show that the accused acted dishonestly, but is upon the accused to bring himself within the exceptions to the section. 1 Cr. L. J. 300, 8 C. W. N. 421.

Prosecution should be instituted within one year from the discovery of the offence. 22 M. 488 Where the general get up of the labels of tins of two manufacturers were almost identical, held, that an offence was committed under the section, and that false trade mark and counterfeit trade mark, were the same thing. 16 B. L. R. 78, 15 Cr. L .J. 522, 24 I. C. 834.

S. 487 I. P. C :—Making a false mark upon any receptacle containing goods.

Evidence :—Prove (1) that accused made some mark upon some case, package, or other receptacle containing goods, (2) that such mark was a false mark, (3) that he did so in a manner reasonably calculated to cause some public servant or some other person to believe (a) that such receptacle contained goods which it did not contain, or (b) that it did not contain goods which it did contain, (c) that the goods contained in such receptacle were of a nature or quality different from the real nature or quality thereof.

S. 488 I. P. C :—Punishment for making use of any such false mark.

Evidence :—Prove (1) that accused made use of some mark upon some case package, or receptacle containing goods, (2) and (3) same as for S. 487.

S. 489 I. P. C :—Tampering with property mark with intent to cause injury.

Evidence :—Prove (1) that the mark in question is a property mark, (2) that accused removed, destroyed, or defaced, or added to such mark, (3) that he did so intending

thereby to cause injury to some person; or that he did so knowing that he might thereby cause injury to some person.

S. 489 A. I. P. C:—Counterfeiting currency-notes or bank-notes.

Evidence:—Prove (1) that the note in question is a currency-note or bank-note, (2) that accused counterfeited it, or knowingly performed any part of the process of counterfeiting it.

The resemblance need not be perfect, but it must be sufficient to deceive people of ordinary intelligence who are familiar with currency-notes. 12 Cr. L. J. 378. On representation a person that can counterfeit currency-notes, induced another to advance money, the former is guilty of cheating under S. 420, though he did not intend to counterfeit, but not under S. 489 A. 18 Cr. L. J. 362, 38 I. C. 746.

S. 489 B. I. P. C:—Using as genuine forged or counterfeit currency-notes or bank-notes.

Evidence:—Prove (1) that the currency-note or bank-note in question was forged or counterfeited (2) that accused sold to, or bought or received from, some person, or trafficked in, or used as genuine, such currency note or bank-note, (3) that when he did so he knew or had reason to believe that it was forged or counterfeited.

S. 489 C. I. P. C:—Possession of forged or counterfeit currency notes or bank-notes.

Evidence:—Prove (1) that the currency-note or bank-note in question was forged or counterfeited (2) that accused was in possession of it, (3) that he at the time of his possession knew, or had reason to believe that it was forged or counterfeited, (4) that he intended to use it as genuine, or that it might be used as genuine.

An offence under this section is distinct from an offence under S. 411 (receiving or retaining stolen property) and such offences should be tried separately. 29 C. 387.

S. 489 D. I. P. C:—Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

Evidence:—Prove (1) that the thing in question was a machinery, instrument or material necessary for or used in forging or counterfeiting a currency note or bank-note, (2) that accused made, or performed some part of the process of making the machinery instrument, or material, in question; or that he bought, sold, or disposed of it; or that he had it in his possession, (3) that the object of the accused was that such machinery, instrument, or material might be used for the purpose of forging or counterfeiting currency-note or bank-note; or that he knew, or had reason to believe, that the same was intended to be used for such purpose.

To establish a charge under the section, the prosecution must prove first that the machinery, instrument or material found in the possession of the accused is such as would be used for the production of a counterfeit note and then further that the accused knew or intended that such articles would be used for that purpose. The onus of proving both these lies heavily on the crown, with expert evidence, if necessary. The word 'counterfeiting' should be used in the sense that the resemblance must be such as may in circulation impose on people of ordinary intelligence. There is no offence committed where all that is proved is that the accused was studying the art of counterfeiting and equipping himself with objects suitable for the purpose. 10 M. L.T. 108, 21 M. L. J. 766.

12 Cr. L. J. 377, 11 I. C. 241.

Criminal breach of contracts of service,

Ss. 490 to 492 I. P. C.

S. 490 I. P. C:—Breach of contract of service during a voyage or journey.

Evidence:—Prove (1) that accused entered into a lawful contract to render his personal services. (2) that such contract was a lawful one. (3) that accused was bound by such contract (a) to convey or conduct certain person or some

property, from one place to another; or (b) to act as a servant to some person during a voyage or journey; or (c) to guard some person or property during a voyage or journey. (4) that accused failed to perform such contract. (5) that he did so voluntarily. (6) that such omission was not in consequence of illness or ill-treatment of the accused.

This section does not apply to a servant hired by the month or from day to day and under a continuous implied contract to serve until the engagement is terminated. (1863) 1 Weir 559, (1884) 1 Weir. 560.

The duty of the accused under the contract must have been either (1) to personally convey or conduct a person or property from one place to another; or (2) to act as servant to any person during a voyage or journey; or (3) to guard any person or property during a voyage or journey.

A breach of the contract of service due to negligence, or due to accident or coercion is not within the section.

The section is limited to contract for personal services. A contract to act as a butler on occasions when the duties of his master required him to go into camp, is not a contract to act as a servant within the meaning of this section. 1 Weir. 560. Nor does this section apply to a contract to supply carts and work them for a certain period. The scope of the section, in this respect, is restricted to a contract to take particular goods or a particular load of goods from one specified point to another. Ratanlal 349.

The contract contemplated is one of personal service. 9 W. R. Cr. 12, and probably to travellers. It does not matter if the servant is paid a lump sum, for the whole voyage or journey or so much per week or month. (1892-96) 1 U. B. R. 288. Whether mere abuse amounts to ill-treatment is a question of fact. (1892-96) 1 U. B. R. 288. Fear of ill-treatment is no excuse.

S. 491 I. P. C:—Breach of contract to attend on and supply wants of helpless person.

Evidence :—Prove (1) that accused entered into a contract to attend on, or supply the wants of, the person in question. (2) that such contract was a lawful one. (3) that such person was helpless or incapable of providing for his own safety or of supplying his own wants. (4) that such helplessness or incapability was due to youth, or unsoundness of mind, disease or bodily weakness. (5) that accused omitted to attend on such person, or to supply his wants. (6) that he did so voluntarily.

This section does not apply to an ordinary cook in a family who is not bound by a contract to attend on or to supply the wants of any helpless person. Ratanlal 354.

A person who is disabled by illness cannot be said to voluntarily omit.

S. 492 I. P. C :—Breach of contract to serve at distant places to which servant is conveyed at master's expense.

Evidence :—Prove (1) that accused entered into a contract. (2) that such contract was a lawful one. (3) that it was reduced to writing. (4) that it was for a period not extending for more than three years. (5) that by it accused was bound to work for another person. (6) that such work was that of an artificer, workman, or labourer. (7) that the work was to be done at some place within British India. (8) that by virtue of the contract the accused had been, or was to be, conveyed at the expense of the other person, to the place in question. (9) that the service which the accused was to render was reasonable and proper. (10) that accused voluntarily deserted such service during the continuance of his contract; or that he refused to perform the service which he had contracted to perform without reasonable and probable cause.

The terms 'artificer,' 'workman' and 'labourer' have reference only to those occupations in which manual labour is an essential element. They do not, for instance, apply to contracts to serve as an actor in a theatrical company.

An 'artificer' is a skilled workman. 13 Q. B. D. 832, 833. The words artificer, workman or labourer include labour skilled and unskilled, such as that of a plantation cooly. 3 M. H. C. R. Appx. 25, 8 W. R. Cr. 6. Or a silk spinner in a factory. 14 W. R. Cr. 29. They do not apply to contracts to serve as domestic servants. 3 B. L. R. 32, 12 W. R. Cr. 26, or to an elephant driver, 8 C. L. R. 254, or to a butcher who supplies skins. 7 M. H. C. Appx. 13, or to any person who does not undertake personally to do the work, but who only contracts to get it done by some one else. 7 M. 100, 10 B. 96, or to an actor in a theatrical company, whose work belongs to the department of fine arts. 1 Cr. L. J. 1103. Breaches of contracts by maistries and labourers in the planting districts of the Madras Presidency are also punishable. Madras Planter's Labour Act, 1903, Ss. 24, 28 to 30 and 35.

Offences relating to marriage.

Ss. 493 to 498 I. P. C.

S. 493 I. P. C:—Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Evidence:—Prove (1) that accused caused the woman in question to believe that she was lawfully married to him. (2) that he induced that woman to cohabit with him under that belief. (3) that he caused such belief by deceit.

The act falling within the purview of this section will also come under Cl. (4) of S. 375 I. P. C.

Though a woman is incapable of committing the substantive offence, she may be convicted of an abetment of an offence, under this section. 17 Cox. 609.

S. 494 I. P. C:—Marrying again during lifetime of husband or wife.

Evidence:—Prove (1) that accused had already been married to some person. (2) that the person with whom he had married was still living. (3) that accused married another person. (4) that the second marriage was void by reason of its taking place during the life of the first spouse.

Where marriage is an ingredient of an offence, the fact of the marriage must be strictly proved. S. 50 I. E. A., 5 C. 566, 8 B. L. R. App. 63, 17 W. R. 5, 5 A. 233. It is also incumbent upon the prosecution to prove the validity of the first marriage. 16 Cox. 292. The validity of a marriage will be determined in accordance with the religious usage of each sect.

The marriage of a Mohommedan woman after the apostacy of her first husband but before expiry of iddat is invalid under Mohammedan law not by reason of its taking place during the lifetime of her first husband and hence she is not guilty of bigamy. 39 C. 409, 15 C. L. J. 263, 16 C. W. N. 451, 13 Cr. L. J. 257, 14 I. C. 641. Where a Hindu channer woman became a convert to Muhamedanism and married a Mussalman husband, she is guilty of an offence under S. 494 I. P. C. Conversion has not the effect of dissolving the marriage tie. 59 I. C. 33, 22 Cr. L. J. 1. The accused, a Hindu convert to Christianity, married a Christian woman according to the Roman Catholic religion; he subsequently again became a Hindu. He then married a Hindu woman according to the Hindu rites, though his Christian wife was alive at that time. Held, that the accused was not guilty of bigamy. 33 M. 371, 11 Cr. L. J. 682, 8 I. C. 572.

S. 199 Cr. P. C., only requires that in the case of an offence under S. 498, I. P. C., there should be a complaint by the husband in respect of the facts constituting the offence. It cannot be said that there was no such complaint merely because the husband alleged additional facts which, if proved, would have amounted to the graver offence under S. 494 I. P. C. 22 Cr L. J. 742, 64 I. C. 134.

A Magistrate of the 1st Class has jurisdiction to try an offence under S. 494 I. P. C., and dispose of the same without committing the case to the Court of Session, and an order of discharge passed by the Magistrate in such a case, after the accused had been called upon to enter on his defence, is tantamount to an acquittal. 75 I. C. 727, 25 Cr. L. J. 39.

S. 495 I. P. C :—Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

Evidence :—Prove the same points (1) to (4) as for S. 494 ; and show further (5) that the accused, when marrying the second person concealed from such person the fact of the former marriage.

A woman who contracts a second marriage sixteen months after she has lived with her first husband without disclosing that fact to the second husband or taking any steps to ascertain the whereabouts of the first husband is liable under this section. 4 W. R. 25. But where the accused happened to be a young girl of ten and where the marriage was negotiated by her mother, she was given the benefit of S. 83. Ratanlal 876.

S. 496 I. P. C :—Marriage ceremony fraudulently gone through without lawful marriage.

Evidence :—Prove (1) that accused went through the ceremony of marriage, (2) that when he went through such ceremony he knew that he was not thereby lawfully married to the complainant, (3) that he did as in (1) dishonestly or with a fraudulent intention.

Ss. 493 and 496 :—The two sections are somewhat alike ; the difference appears to be that under S. 493, deception is requisite on the part of the man, and cohabitation or sexual intercourse consequent on such deception. The offence under S. 496 requires no deception, cohabitation, or sexual intercourse, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former only by the man.

An abuse of the marriage ceremony where no deceit is practised on the woman, and no dishonest or fraudulent intent is proved, is not an offence under this section.

The mere act of allowing the marriage to take place at one's house does not amount to an abetment of illegal marriage.

People may go through sham marriages if they like, in the absence of dishonest or fraudulent intention. 3 Cr. L. J. 488. This section applies only when there is a show of marriage to attain some ulterior and fraudulent purpose. 4 Cr. L. J. 152, 10 C. W. N. 982.

S. 497 I. P. C:—Adultery.

Definition:—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.

Evidence:—Prove (1) that accused had sexual intercourse with the woman in question, (2) that she was then the wife of another man, (3) that accused knew, or had reason to believe, that she was the wife of another man, (4) that such man did not consent to, or connive at, such intercourse.

It is not necessary that the adulterer should know whose wife the woman is, provided he knew she was a married woman. 21 W. R. 13.

To constitute 'connivance' there must be something more than mere negligence, than mere inattention, than overconfidence, than dulness of apprehension, than mere indifference; there must be intentional concurrence.

To establish connivance it is not necessary that the party conniving should actually be an accessary before the act, so as to have taken any active measure to bring about the result of adultery, but that he should be cognizant that such a result would follow from certain transaction that he approved of and consented to. 32 L. J. (P. M. & A.) 17.

The sexual intercourse required for adultery is the same identical thing as the sexual intercourse required for rape.

The admission of a man and woman coupled with the evidence of the witnesses to the effect that the two lived

together as man and wife leads to the inevitable presumption that acts of adultery must have been committed. 7 W. R. 59. A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. 6 W. R. 92.

Adultery is an act which requires the consent of both the parties.

For an attempt it is not sufficient when there is evidence of only the accused's presence at the spot in which adultery might have been committed and that he was minded to commit it. 1 Weir. 569.

Where a married woman went to visit a man, but before adultery was committed, she was taken away by her husband, it was held that the man could not be convicted of an attempt to commit adultery. P. R. No. 25 of 19[illegible]2. Before an accused can be convicted under S. 497, the actual fact of the marriage must be proved. Evidence that the complainant lived with the woman, on whom he alleged that the accused committed adultery, as man and wife, is not sufficient to prove the fact of marriage, for it is mere evidence of conduct. 17 B. L. R. 75, 16 Cr. L. J. 213, 27 I. C. 837. Mere desertion of the husband by the wife for one year does not dissolve the marriage, nor a complaint under S. 497, is liable to be dismissed on the above ground. 18 Cr. L. J. 321, 38 I. C. 433.

S. 498 I. P. C:—Enticing, or taking away or detaining with criminal intent a married woman.

Evidence:—Prove (1) that the woman in question is the wife of another man. (2) that she was under the care of her husband, or of some one on his behalf. (3) that accused took or enticed her away from her husband or that other person, or concealed, or detained her. (4) that accused knew, or had reason to believe that she was the wife of another man. (5) that accused did as above with intent that she might have illicit intercourse with some person.

Where a wife, who was deserted by her husband, went of her own free will to live with another man, a conviction under this section was set aside, as there was no enticing or taking away. 2 W. R. 35.

The criminal intent is the essence of the offence, which is complete, although no illicit intercourse may as a fact take place. If it does take place then the offence becomes adultery. S. 497. Consent or connivance on the part of the husband is immaterial under this section.

To sustain a conviction under the section it must be proved that the woman had been enticed or taken away from her husband's house and that she was detained for the purpose of illicit intercourse. The mere fact that she was seen outside the accused's house is not sufficient. 21 Cr. L. J. 383, 55 I. C. 863. Where the woman was living with the accused of her own free will, and had no desire to return to the husband and when the husband went to the accused's house and claimed her, she deliberately turned her back on him and walked into the house and the accused did not then make her over to the husband, held, that the accused could not be convicted of detaining her. 18 A. L. J. 311, 56 I. C. 209. A person who entices away a married woman who had long ago been discarded, is not guilty of offence under S. 498 I. P. C. 16 Cr. L. J. 216, 27 I. C. 840. The wish in a deposition of the husband to prosecute the accused during the trial at the instance of Police amounts to a complaint, and the accused may be convicted. 38 A. 276, 17 Cr. L. J. 72, 32 I. C. 664.

To sustain a conviction under the section it must be proved that the accused knew that the woman was married, and the mere presumption, that he must have known this, is not sufficient. 22 Cr. L. J. 412, 61 I. C. 652.

S. 499 to 502 I. P. C.

Defamation.

Defamation defined.

Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm

or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases herein after excepted, to defame that person.

Explanation 1. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of the person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First exception. It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second exception. It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third exception. It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character so far as his character appears in that conduct, and no further.

Fourth exception. It is not defamation to publish a substantially true report of the proceedings of a court of justice, or of the result of any such proceedings.

Explanation. A Justice of the peace or other officer holding an inquiry in an open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth exception. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth exception. It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation. A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh exception. It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth exception. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Ninth exception. It is not defamation to make an imputation on the character of another, provided that the im-

putation be made in good faith for the protection of the interest of the person making it, or of other person, or for the public good.

Tenth exception. It is not defamation to convey a caution in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Publication. "Makes or publishes". The accused must have communicated the imputation to some third person or persons, and the onus of proof of this lies on the prosecution. 1 Cr. L. J. 982, 10 Bur, L. R. 304. Communication solely to the person defamed can never, under Indian Law constitute the offence of defamation. 10 W. R. 184, 18 B. 205, 30 C. 402. Communication of the imputation to the wife of the person libelled or to his pleader is a publication. 1 Weir 579, 11 Cr. L. J. 281. If a person, before communicating the imputation to the person defamed, communicates it to some one else, e. g., by dictating a letter containing the imputation to the writer of it, or giving it to an office boy or clerk to be press-copied or showing it to a friend or to his own wife, this constitutes a publication. 17 M. 401.

The publication must be made by the accused himself or by his servant or agent authorised to do so, expressly or by implication. A posted a sealed letter to B containing a libel on C. D, a post-man, delivers the letter. A, and not D, has published the libel. The person who publishes the imputation need not necessarily be the author of the imputation. 10 B. 97 15 B. 286. The imputation may be true or false, and, except under the circumstances mentioned in the First and Fourth Exceptions the truth of defamation is no defence to a charge of defamation.

No action for damages can be maintained on account of defamatory words spoken by parties to a suit or witnesses.

14 B. 97, or by a Judge or Magistrate in the course of his official duties or by an advocate in the course of his conduct of a case. 17 M. 87.

Though there is an absolute protection from prosecution for defamation given to witnesses in respect of their statements made in the witness-box in a court of justice, and to parties to a suit yet this previlege does not cover remarks of a witness in the box wholly irrelevent to the enquiry, uncalled for by any question of counsel and introduced by the witness maliciously for his own purposes. 32 C. 756, followed in 21 C. 392.

The witness is protected against a charge of defamation by S. 76, apart from the Ninth Exception to S. 499. 6 Cr. L. J. 197, 201. Vide S. 132 I. E. A. A statement made in answer to a question put by a Police officer under S. 161 Cr. P. C., in the due course of an investigation made by him is privileged and cannot be made the foundation of a charge of defamation. 16 M. 235, 1 Weir 587.

S. 500 I. P. C:—Punishment for defamation.

Evidence:—Prove (1) that the imputation in question consists of words, spoken or intended to be read, or of signs etc., (2) that the imputation concerned the complainant, (3) that such imputation emanated from the accused, (4) that he made or published the same.

There must be evidence to show that the publication was made by the accused. 10 Bur. L. R. 304.

Relevant facts:—A sues B for libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of a correspondence in which it is contained, are relevant facts, though they do not contain the libel itself. S. 6 ill (c) I. E. A.

A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true. The

position and relationship of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. S. 9. ill (b) I. E. A.

A is accused of defaming B by publishing an imputaion intended to harm the reputation of B. The fact of previous publications by A respecting B showing the will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question. The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard of it, are relevant, as showing that A did not intend to harm the reputation of B. S. 14, ill.(e) I. E. A.

Admissibility of evidence :—A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remark of a crowd of spectators on these points may be proved. S. 32, ill (n) I. E. A.

A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant between B and C. S. 43, ill.(a) I. E. A.

Evidence of the complainant having previously acted as alleged in the libel is admissible. 7 A. 906. A complaint to a Police constable is not privileged. 17 Cr. L. J. 331, 35 I. C. 813. A Police officer maliciously making a defamatory report about a person to his superior is guilty of defamation. No law protects Police officers in this respect. 11 Cr. L. J. 205, 5 I. C. 714. Questions which a pleader asks in cross-examination are presumed to be asked in good faith for the protection of his client. The presumption is, therefore, that a question in cross-examination making an imputation affords no ground for a criminal prosecution. To rebut this presumption of good

faith, it must be clearly proved that the pleader was actuated by an improper motive personal to himself, and not by a desire to protect the interest of client. 41 C. 514, 14 Cr. L. J. 528, 18 C. W. N. 424, 29 I. C. 1008

The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not. 3 A. 342. It would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. 9 M. 387. The sending of a newspaper containing defamatory matter by post from Calcutta where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad. 3 A. 342, 15 B. 286, 22 B. 112, 129; 5 W. R. 44. Statements of witnesses made in the witness-box are absolutely privileged. If they are false the remedy is by indictment for perjury and not defamation. 2 M. 13. see also 11 B. L. R. 321. 11 M. 477, 30 M. 222. According to the Calcutta High Court a witness who, being actuated by malicious motives, makes a voluntary and irrelevant statement, not elicted by any question put to him while under examination, to injure the reputation of another, commits an offence under this section. 32 C. 756, 21 C. 392, 2 W. R. 36, 3 W. R. 44, 5 C. W. N. 293. The Allahabad High Court has in full Bench held that if a witness whilst giving evidence makes a statement concerning any person which amounts to defamation, he may be prosecuted under S. 499 I. P. C., in respect of such statement, and it lies upon him to show that the statement which he has made falls within one or other of the exceptions to S. 499 or that he is protected from prosecution by the proviso to S. 132 I. E. A. 29 A. 685. The chief Court of the Punjab has ruled that there is nothing in this section which protects witnesses as a class in respect of statements made by them in that character. The true test of immunity in the case of witnesses, as of other

persons, is whether the exception is established in its entirety. P. R. No. 14 of 1893. Statements of a defamatory character made by an accused in the course of the statement which he is invited to make under S. 342 Cr. P. C., is privileged. 5 M. L. T. 256. If the accused himself asks any question, while defending himself, the question could not be made the subject of a civil action, nor would any criminal proceeding lie for defamation. 15 M. 414, 416. The defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding, but good faith, should be proved. 22 A. 234. The defamatory matter appearing in a plaint is not privileged. 5 C. W. N. 293, 23 C. 867. A person will be guilty of defamation for making a defamatory statement in an affidavit if the statement is wholly irrelevant to the enquiry to which the affidavit relates. 8 C. W. N. 292. The act of filing in court a petition containing imputations concerning a person calculated to harm his reputation amounts to making or publishing the imputation 14 W. R. 27, 2 W. R. 36 see also P. R. No. 21 of 1887.

A complaint of defamation cannot be dismissed on the technical ground that the offence of defamation charged merged in an offence punishable under S. 182 and that no sanction was obtained for the prosecution under the latter section required by S. 195 Cr. P. C. 1 Weir. 585. An acquittal on a charge of giving false information to a public servant under S. 182 I. P. C., on the ground that the person to whom the information was given was not a public servant, is no bar to a trial under S. 500 I. P. C. 37 C. 604.

S. 501 I. P. C:—Printing or engraving matter known to be defamatory.

Evidence:—Prove (1) that the matter in question is defamatory. (2) that accused printed or engraved it. (3) that when he did so he knew or had reason to believe that such matter was defamatory.

Note:—This is another instance of an abetment being made punishable as a substantive offence. P. R. No. 18 of 1889.

S. 502 I. P. C:—Sale of printed or engraved substance containing defamatory matter.

Evidence:—Prove (1) that the matter is defamatory, (2) that it is printed or engraved on the substance in question. (3) that accused sold, or offered for sale, that substance. (4) that he then knew that it contained such defamatory matter.

S. 503 to 510 I. P. C:—

Criminal intimidation, insult and annoyance.

Criminal intimidation, defined.

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation:—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

"Threatens." It is not necessary that the threat be addressed directly to the person to be intimidated; it is sufficient if it is intended to be, and is communicated to such person. 1 Weir. 623.

The threat referred to in this section must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his mind. 15 C. 671, 673. The person threatened must be "interested" in the person upon whom the injury is to be inflicted, and his interest may be personal or official but it must be one or the other. 11 B. 376.

'Property'; i. e., something which the threatened already owns, and not prospective gains in trade.

Criminal intimidation and Extortion:—In extortion the immediate purpose is filthy lucre by obtaining money or money's worth; in criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from, something which he is not legally bound to do or omit.

S. 504 I. P. C:—Intentional insult with intent to provoke breach of the peace.

Evidence:—Prove (1) that accused insulted some person, (2) that he did so intentionally. (3) that he thereby gave provocation to that person. (4) that he intended, or knew that it was likely, that such provocation would cause that person to break the public peace, or to commit any other offence.

The essence of this offence consists in the effect which it is likely to produce upon the person to whom the provocation is addressed, not upon any other person who may be present or who may come to know it. See 26 C. 653, at 663; 24 A 155, 1 Weir 620. It is no answer to a charge under this section that the person insulted was in such a state of terror as to feel no disposition to break the peace, provided the provocation was such as would naturally have that result. 10 M 353, nor would the mere forbearance of the person insulted from being provoked to commit a breach of the peace, 1 Weir. 621, be a valid defence. To constitute offence under the section, insult must be caused intentionally provoking the person to break the public peace. Discourtesy and bad manners do not amount to an offence under the section. 18 A. L. J. 515, 56 I. C. 435; see also 39 M 561, 28 M. L. J. 505, 2 L. W. 463; 17 M. L. T. 398, 1915 M. W. N. 365, 16 Cr. L. J. 477, 29 I. C. 109.

Insult under the section, which may be inferred from tone and manner of spoken words, consists in an intentional act causing provocation thereby with the knowledge that the

provocation would under ordinary circumstances cause breach of the peace to be committed, though the person insulted does not commit a breach of the peace in the particular case. 24 C. L. J. 137, 21 C. W. N. 95, 18 Cr. L. J. 17, 37 I. C. 849. An abuse and threat to strike offered by persons while being remonstrated with, for intentionally preventing the complainant from irrigating his crops, is an assault causing a breach of the peace which under the section may be spoken words only or of conduct or actions of men. 18 Cr. L. J. 463, 39 I. C. 303.

S. 505 I. P. C:—Statements conducing to public mischief.

Evidence:—Prove (1) that accused made, published, or circulated the statement, rumour, or report, in question (2) that he did so with intent to cause, or which was likely to cause, some officer, soldier, or sailor, to mutiny or otherwise disregard or fail in his duty as such. (3) that such officer, soldier, or sailor, belonged to the army or Navy of his Majesty, or to the Royal Indian Marine, or to the imperial service troops,

Or prove (1) as above; and

(2) that he did so with intent to cause, or which was likely to cause, fear or alarm to the public or to some section of the public. (2) that the fear or alarm was such as might induce a person to commit an offence against the State or the public tranquility.

Or prove (1) as above; and

(2) that he did so with intent to incite, or knowing it likely to incite, some class or community of persons to commit some offence against some other class or community.

S. 506 I. P. C:—Punishment for criminal intimidation.

Evidence:—Prove (1) that accused threatened some person. (2) that such threat consisted of some injury to his person, reputation or property, or to the person, reputation or property of some one in whom he is interested. (3) that he did so with intent to cause alarm to that person; or to cause

that person to do any act which he is not legally bound to do, or omit to do any act which he is legally entitled to do, as a means of avoiding the execution of such threat.

S. 507 I. P. C :—Criminal intimidation by an anonymous communication.

Evidence :—Prove the same points as for S. 506; and show further that the offence was committed by some anonymous communication from the accused.

S. 508 I. P. C :—Act caused by inducing person to believe that he will be rendered an object of the divine displeasure.

Evidence :—Prove (1) that accused caused, or attempted to cause, some person (a) to do something that he was not legally bound to do, or (b) to omit to do something that he was legally entitled to do. (2) that he did so voluntarily. (3) that he so caused, or attempted to cause, such person to do as above, by inducing or attempting to induce him to believe that he or some one he has an interest in, would become, or be rendered, an object of divine displeasure, if he failed to do, &c., (4) that he induced such person to believe that such divine displeasure would arise from some act of the accused. (5) that the object of the accused was thereby to cause such person to so do or to so omit to do, such thing.

S. 509 I. P. C :—Word, gesture or act intended to insult the modesty of a woman.

Evidence :—Prove (1) that accused uttered the words, or made the sound, or gesture, &c., in question. (2) that such word, sound, or gesture was intended by the accused to be heard or seen by some woman. (3) that he thereby intended to insult the modesty of that woman.

Or prove.

(1) that the accused intruded upon the privacy of of some woman. (2) As (3) above.

S. 510 I. P. C :—Misconduct in public by a drunken person.

Evidence:—Prove (1) that accused appeared in some public place, or some place which it was a trespass in him to enter. (2) that he was then in a state of intoxication. (3) that he conducted himself in such a manner as to cause annoyance to some person.

Mere intoxication is not made punishable. It is only when a person appears, in a state of drunkenness, in a public place, or in a street, or goes to a place where he has no right to go, and causes annoyance to the people, that he commits this offence.

S. 511 I. P. C:—Punishment for attempting to commit offences punishable with transportation or imprisonment. Attempts to commit offences.

Evidence:—Prove (1) that accused attempted to commit some offence punishable with transportation or imprisonment under the Indian Penal Code, or that he attempted to cause such offence to be committed. (2) that in such attempt he did some act towards the commission of that offence.

Attempt is the direct movement towards the commission after the preparations are made. Prior to the completion of a crime three stages may be passed through. First, an intention to commit the crime may be conceived, Secondly, preparation may be made for its committal. Thirdly, an attempt may be made to commit it. Of these three stages the mere forming of the intention is not punishable under the Penal Code. Nor is the preparation for an offence indictable. The law will not take notice of an intent without an act. 24 B. 287, I. B. L. R. 678. Intention in most cases is to be inferred from the nature of the acts done and the circumstances of the case. The general Presumption is that a man intends the ordinary and natural consequences of this act. 13 Cr. L. J. 864, 17 I. C. 800. See also Page 1. In order to constitute an attempt, an act towards the commission of an offence must be done. 40 M. 34, 17 Cr. L. 7. 321, 37 B. 553 34 B. 378, 32 M. 384. An 'attempt' is made punishable, because every 'attempt', although it fails success, must create alarm, which of itself is an injury, Attempt: Preparation distinguished.

and the moral guilt of the offender is the same as if he had succeeded. All that is necessary is some external act, something tangible and ostensible showing progress towards the actual commission of the offence. It does not matter that the progress is intercepted. 34 B. 378; 11 Cr. L. J. 180; 5 I. C. 612, 12 B. L. R. 21. A person may be convicted of an attempt to do the physically impossible, e. g., picking an empty pocket. 40 M. 34, see also ill (a) S 511, I. P. C.

Attempt does not imply success. It is merely trying. Whether the intention has achieved the result is immaterial.

If a man who has evil intent does an act which is the last possible act that he could do towards the accomplishment, of the particular crime, he cannot pray in his aid an obstacle, intervening not known to himself. 10 Cr. L. J. 57. 2 I. C. 593 9 C. L. J. 432.

Where an overt act is begun which would have led to the finished offence, but for an interruption arising independently of the will of the accused, it is a complete case of an attempt to commit the offence. 37 B. 553; 15 B. L. R. 564, 568, 14 Cr. L. J. 433, 451; 20 I. C. 593; 611.

Definition of 'attempt' to commit crimes is a dangerous thing and the only safe way is to consider the facts of the particular case and to decide in accordance with the dictates of common sense. 15 Cr. L. J. 265, 23 I. C. 473.

S. 511 (attempt to commit offences) may be applied to offences under special law, though the Code itself does not apply. 40 M. 34, 4 L. W. 82, 20 M. L. T. 180, 31 M. L. J. 178, 17 Cr. L. J. 321, 35 I. C. 497, contra. 11 B. 376; 381; 1 weir. 640; 12 Cr. L. J. 116; 9 I. C. 682, 28 C. 314.

It is illegal to convcit a man both for attempting to commit and of abetting the same offence. 8 B. L. R. 855; 4 Cr. L. J. 450.

S. 511 I. P. C., does not apply to cases of attempts made punishble by some specific sections of the code. The attempts specially provided for are, Ss. 121, 124, 124 A, 125,

130, 131, 161, 162 163, 196, 198,200, 213, 239, 240, 241, 307, 308, 309, 385, 387, 389, 391, 393, 394, 397, 398, and 460.

A person charged with an attempt may be tried with a person committing or abetting the same offence or another offence committed in the same transaction. A person may be convicted of an attempt where only charged with the substantive offences. S 237 (2) Cr P. C. S 75 I. P. C., does not apply to cases of atempts or abetments not specially made offences within Chapters XII, or XVII ; nor to cases which are confined to S. 511 I. P. C. The offences which fall under S. 511 must be punished entirely irrespective of S. 75 I. P. C. I weir 37, 17 A. 120 & 123,5 Cr. L. J. 85.

Preparation consists in devising or arranging the means or measures necessary for the commission of the offence 25 M. 726. The attempt is the direct movement towards the commission after the preparations are made. The line of separation between attempt and preparation is very thin. See 37 B. 553. It would be a question of fact in each case whether the act of the accused amounted to an attempt or stopped short at the stage of preparation. 15 A. 173, 15 Cr. L. J. 265, 23 I. C. 473. Preparation or providing an opportunity is a stage of the proceeding short of attempt and is not punishable by law. An indirect preparation which does not amount to an act which can be held to be a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same. I. B. L. R. 678, 24 B. 237. Preparation to commit an offence is punishable only when the preparation is to wage war (S. 122), preparation to commit dacoity (S. 399), and assembling dacoits (S. 402). Preparation.

Where the accused was detected on the roof of a bazaar with an open clasp knife in his hands and two gunny bags and it was found that he had come there with intention of committing theft. Held, that the matter had not proceeded beyond the stage of preparation and the accused could not be convicted under S. 457-511, but under S. 447 only. 20 Cr. L. J. 571, 52 I. C. 59. Where the acts committed by the accused

consisted in running after the complainant with an axe in his hand and raising it to the shoulder when about four kadams from the complainant, but before there was time to do anything further in pursuance of his purpose, the axe was snatched out of the accused's hands, it was held that the accused was not guilty of an attempt to commit murder as neither of his acts per-se have caused death, but that he was guilty of an attempt to cause grievous hurt punishable under S. 511 read with S. 326: The Court said : " In order to constitute an offence indictable under S. 307 there must be an act done under such circumstances that death might be caused if the act were carried to its utmost possible limits without any interference from without. 30 P. R. 1904. The prisoner was entrusted by his master with some meat which was to be weighed out and delivered to a customer. By means of a false weight he kept back a part of the meat with intent to steal it; but the fraud was discovered, before he had actually moved away with it. Held, that he had committed an attempt to steal the meat. 31 L. J. (M. C.) 89. The accused was found carrying a Police jacket under his arm with intent that it should be believed that he was a Police constable. Held, that he was not guilty under S. 171 as his act amounted merely to preparation to commit the offence punishable under that section I. U. B. R. P. C. 3. A contractor for the supply of milk to a regimental hospital was found in the hospital compound with about three gallons of stale milk in his possession going in the direction of the place where the cows were about to be milked, this milk being in a cane similar to those in which the cows were milked. It was held that the acts did not amount to more than preparation. 40 P. R. 1885. The accused asked a native doctor to supply her with medicine for the purpose of poisoning her son-in-law. Held, that the offence committed was not an attempt to murder, as it was a mere act by way of preparation to commit an offence and was not a transaction which would be held necessarily to end in murder if not interrupted, but that such act might be held to be an instigating of the native doctor to abet the accused in the commission of murder, and with reference to S. 108, expl. 4, might have been punished under

S. 116 and 302. 24 P. R. 1882. A woman ran to a well, stating that she would jump into it, and she was caught before she could reach it. The High Court held that she could not be convicted of an attempt to commit suicide and remarked: "There is no doubt the accused intended to commit suicide and that she prepared to carry out that intention and proceeded to the well. She might, however, have still changed her mind, and she was caught before she did anything which might be regarded as the commencement of the offence. 8 M. 5. Mere presence on the roof of another person with implements for housebreaking was held not to constitute an attempt to commit burglary though the accused might be liable for house trespass. 6 Cr. L. J. 444. An accused with intent to break into a house commenced boring operations on the outer wall but before the hole had extended right through the thickness of the wall, they were interrupted. It was held, that this act was an attempt to commit an offence under S. 457. 37 B 553, 15 B. L. R. 569, 14 Cr. L. J. 451, 20 I. C. 611. The production of the copy of a forged document is not an attempt to use the original. 15 Cr. L. J. 344, 23 I. C. 696. The accused took off the girl's cloths threw her on to the ground and then sat down beside her. He said nothing to her nor did he do anything more to her. Held, that the accused committed an offence under S. 354 and was not guilty of an attempt to commit rape. 13 Cr. L. J. 469, 15 I. C. 309. The accused who were helping a regimental sepoy, a Head constable and a Ghariwala believing the latter two also to be regimental sepoys, to desert their regiment, were guilty of attempting and abetting the desertion of sepoys in the army under S. 135 and Ss. 108 and 511 I. P. C., although the regimental sepoys never intended to desert and had offered to do so only to entrap the accused 18 Cr. L. J. 431. 38 I. C. 991. The accused sent some sweetmeats containing poison to one person. The sweetmeats were shared by some others but none of them died. The accused was guilty of attempting to cause death as his intention was to cause death although the quantity of arsenic was insufficient to cause death, 22 Cr. L. J. 194, 60 I. C. 50.

SPECIAL AND LOCAL LAWS.

Special and local laws are defined in Ss. 41 and 42 I. P. C. See page 14 of Vol. 1.

The Special Laws mentioned in Ss. 41 and 42 I. P. C. are only laws such as the Excise, Opium, Cattle Trespass Act etc, creating fresh offences other than those specified in the code itself. The Whipping Act is not a special Law. 15 Cr. L. J. 3, 22 I. C. 147.

Procedure:—In the absence of any specific provision to the contrary nothing in the Criminal Procedure Code affects any Special or Local Laws. S. 1 (2). Cr. P. C. Special and Local laws are also not affected by the Indian Penal Code. S. 5 I. P. C. Where the Special Act is silent, the provision of the Code would be applicable. 31 B. 438. Where a violation of a special law is not an offence the rule in S. (5) 2 Cr. P. C., will not apply. 37 C. 237. Offences under Special and Local Laws shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Criminal Procedure Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. S. 5 (2). Cr. P. C.

Although an offence is expressly made punishable by a special and local law, yet it will be punished under the Penal Code, if the facts come within the definitions of the Code. 6 M. 249.

A Police constable was dealt with by his departmental superiors under S. 7, for having accepted a bribe. Held, that he might also be tried and punished for the same offence under S. 163 I. P. C. 26 P. R. 1915 Cr; 16 Cr. L. J. 788; 31 I. C. 644.

In the absence of any rules framed by Government the departmental punishment inflicted on the accused under S. 10

does not bar his prosecution under S. 44 of the Act, unless the Magistrate thinks that the breach of duty is not grave, but trivial. It is grave violation of duty on the part of a Police officer to go to sleep whilst on guard. 17 M. 278, 7 M. H. C. Ap. (1872).

No such prosecution is admissible, if it appears upon the whole frame of the Special Act that it was intended to be complete in itself, and to be enforced only by the penalties created by it; 22 C. 131, 139, 1 M. 55., but in the absence of anything in the Special Act to exclude the operation of the Code, an intention on the part of the Legislature to exclude it should not be inferred. 10 P. R. 1885. However, a person cannot be punished under both the Penal Code and a special law for the same offence. 5 N. W. P. 49, 6 M. 249. See also the General Clauses Act (X of 1897), S. 26. The circumstance that the fact proved would also constitute an offence under a section of the Code, is no reason for quashing a conviction under a special law. 8 W. R. 55. "Special Law" refers to statutory enactment and not to Local Family Law. 10 L. W. 229, 26 M. L. T 238, 37 M. L. J. 361, 20 Cr. L. J. 733, 52 I. C. 893.

TABULAR STATEMENT OF OFFENCES UNDER SPECIAL AND LOCAL LAWS.

Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	By what Court.
If punishable with death; transportation or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant.	Not bailable	Not compoundable.	Court of Session.
If punishable with imprisonment for 3 years and upwards, but less than 7 years.	Do.	Do.	Do. Except in cases under the Indian Arms Act, 1878, S 19 which shall be bailable.	Do.	Court of Session, Presidency Magistrate or Magistrate of the first class.
If punishable with imprisonment for 1 year and upwards, but less than 3 years.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
If punishable with imprisonment for less than 1 year, or with fine only.	Do.	Do.	Do.	Do.	Any Magistrate

The Madras District Police Act XXIV of 1859.

Appointment and dismissal of Police officers.

The appointment of all Police-officers shall, under such rules as the Governor in Council shall, from time to time, sanction, rest with the Inspector-General of Police, Deputy Inspectors-General and the District Superintendents, who may under such rules as aforesaid at any time dismiss, suspend or fine to any amount not exceeding one month's pay, any Police-officer whom they shall think remiss or negligent in the discharge of his duty or otherwise unfit for the same.

Additional Police officers employed at cost of individuals.

It shall be lawful for the Inspector-General of Police, or any District Superintendent, if he shall think fit, on the application of any person showing the necessity thereof, to depute any additional number of Police-officers to keep the peace at any place within the General Police District, at the charge of the person making the application, but subject to the orders of the said Inspector-General or District Superintendent and for such time as they shall think fit: Provided always that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector General or District Superintendent, to require that the officers so appointed shall be discontinued: such person shall be relieved from the charge of such additional force from the expiration of such notice.

Additional force in neighbourhood of railway and other works.

Whenever any railway, canal or other public work shall be carried on or be in operation in any part of the country, and it shall appear to the Inspector-General that the appointment of an additional Police-force in such neighbourhood is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, it shall be lawful for the Inspector-General, with the consent of the Governor in Council, to direct the employment of such additional force and to maintain the same so long as such necessity shall continue; and to make orders from time to time upon the treasurer or other officer having the control or custody of the funds of any company carrying on such works, for the payment of the extra force so rendered necessary as aforesaid.

Special Police officers.

When it shall appear that any tumult, riot or outrage has taken place, or may be reasonably apprehended in any place, and that the ordinary officers appointed for preserving the peace are not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in such place, it shall be lawful for any Police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the public or village servants, or residents of the neighbourhood, as such Police-officer may require to act as special Police-officers for such time and in such manner as he shall deem necessary; and it shall be the duty of such Magistrate at once to comply with such applications.

Powers of special Police officers.

Every special Police-officer so appointed shall have the same powers, privileges and protection, and be liable to all such duties and penalties, and be subordinate to the same authorities as the ordinary officers of Police.

Punishment for refusal to serve.

If any person, being appointed a special Police-officer as aforesaid, shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given him for the performance of his duties, he shall be liable upon conviction before a Magistrate to a fine not exceeding fifty rupees for such neglect, refusal or disobedience.

Police officers not to resign without leave or notice, nor to take other employment.

No Police-officer shall be at liberty to resign his office or withdraw himself from the duties thereof unless expressly allowed to do so in writing by the District Superintendent; or unless he shall have given to his superior officer two months' notice in writing of his intention to do so. Nor shall any such Police-officer engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing under the seal of the Inspector-General.

Unlawful assumption of Police functions, personation of Police, etc.

From and after the passing of this Act, every person not being, or having ceased to be, a duly enrolled Police-officer, who shall unlawfully assume any function or power belonging to the Police, and who shall not forthwith deliver up his certificate, and all the clothing, accoutrements and appointments, and other necessaries which may have been supplied to him for the

execution of his duty, or who shall have in his possession any distinctive article of the dress or appointment directed to be worn exclusively by the Police-force, without being able to account satisfactorily for his possession thereof, or who shall put on the dress of any Police-officer, or any dress designed to represent it, or to be taken for it, or who shall otherwise personate the character or act the part of any Police-officer for any purpose whatever; shall, in addition to any other punishment to which he may be liable for any offence committed under the assumed character, be liable on conviction before a Magistrate to a penalty not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for a period not exceeding six months, or both.

Penalties for neglect of duty, etc.

Every Police-officer who shall be guilty of any violation of duty or wilful breach of any lawful orders and regulations not punishable under section 10 of this Act; or who shall cease to perform the duties of his office without leave, or without having given two months' notice as provided by this enactment, or engage without authority in any employment other than his Police duty; or who shall maliciously and without probable cause prefer any false, vexatious or frivolous charge or information against any individual; or who shall knowingly and wilfully and with evil intent exceed his powers; or shall be guilty of any wilful and culpable neglect of duty in not bringing any person, who shall be in his custody without a warrant, before a Magistrate as hereinbefore provided; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour not exceeding three months' or both.

Penalty for receiving unauthorized fees, etc.

Any Police-officer who shall on any pretext, or under any circumstances, directly or indirectly collect or receive any fee, gratuity, diet-money, allowance or recompense, other than he may be duly authorized by the Inspector-General or other

officer acting under his order to collect or receive, shall on conviction before a Magistrate be liable to a penalty not exceeding six months' pay, or to imprisonment, with or without hard labour not exceeding six months, or both.

Penalty for extortion, etc.

Any Police-officer who shall directly or indirectly extort, exact, seek or obtain any bribe or unauthorized reward or consideration, by any illegal threat or pretence, or for doing or omitting or delaying to do any act which it may be his duty to do or to cause to be done, or for withholding or delaying any information which he is bound to afford or to communicate, or who shall attempt to commit any of the offences abovesaid, or shall be guilty of cowardice, shall be liable upon conviction before a Magistrate to a fine not exceeding twelve months' pay, or to imprisonment with or without hard labour not exceeding twelve months, or both. Provided always that nothing in the three last preceeding sections shall be deemed to preclude the Magistrate from committing for trial any cases of this nature too serious for his cognizance.

Committal by Magistrate of serious cases.

Penalty for offences against Police officer.

If any person shall assault or resist any Police officer in the execution of his duty, or shall aid or incite any other person so to do, or shall maliciously and without probable cause prefer any false or frivolous charge against any Police-officer, such person shall, on conviction of offence before any Magistrate be liable to a fine not exceeding fifty rupees, or to imprisonment with or without hard labour not exceeding three months, or both.

Jurisdiction Provison as to charges against Police officers and Village watchers Liability to prosecution and for higher penalties.

In all cases of convictions under this Act, the Magistrate trying the case shall be restrained within the limits of his ordinary jurisdiction as to the amount of fine or imprisonment he may inflict: Provided always that such charges against Police-officers above the rank of a private shall only be adjudicated on by European functionaries, and that village-watchers alone shall be liable to conviction by heads of villages.

Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act; or to prevent any person

from being liable under any other law, Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act: Provided always that no person shall be punished twice for the same offence.

Levy of fines.

All fines and penalties imposed, and all sums of money recoverable under the authority of this Act, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant of the Magistrate. * * *

Limitation of action.

All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the general Police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the Superintendent or other superior officer of the district in which the act was committed, one month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action or if a sufficient sum of money shall have been paid into Court after such action, by or on behalf of the defendant; and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have cost against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action: Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

The three months' time limit does not apply to all prosecutions for offences under the Act. It only applies against actions for acts done or purporting to be done under the Act and not for the receiving of an unauthorised fee or recompense by a Police officer. The words under the provisions of this Act or under the general powers S. 53 of the Act apply to the phrase "anything done or intended to be done" occurring in the same section and do not qualify "action or prosecutions against any person." 2 L. W. 348; 17 M. L. T. 260; 16 Cr. L. J. 334; 28 I. C. 670.

Plea that act was done under a Warrant.

When any action, prosecution or proceeding shall be brought against any Police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate ; and such plea shall be proved by the production of the warrant directing the act and purporting to be signed by a Magistrate And the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. And no proof of the signature of such official shall be necessary, unless the Court shall see reason to doubt its being genuine: Provided always that any remedy which the party may have against the authority issuing such warrant shall remain entire.

A demand by Police constable of "mamul" (customary payment made to obtain his favour) is a 'threat' within S. 46 of the Police Act and obtaining such money by threat is an offence under the section. 41 M. 465; 19 Cr. L. J. 942; 47 I. C. 666.

The Indian Lunacy Act IV of 1912.

The following are the powers and duties of :—

Powers and duties.

(1) *An officer in charge of a police station*—

(i) May arrest or cause to be arrested all persons found wandering at large within the limits of his station whom there is reason to believe to be lunatics,

(ii) Shall arrest or cause to be arrested all persons believed to be dangerous lunatics within the limits of his station.

The lunatics so arrested shall be sent to a first-class Magistrate; section 13 (1).

(iii) Shall immediately report to a Magistrate of the first class any instance of a lunatic within the limits of the police station not being under proper care and control or being cruelly treated or neglected by any relative or other person having the charge of such lunatic —section 13 (2).

By "at large" is meant that they are found at a distance from their residence, and obviously uncared for and uncontrolled by their proper guardians.

(2) *Every police officer* may recapture any lunatic who escapes from a lunatic asylum, provided that in the case of a lunatic not being a criminal lunatic or a European lunatic subject to the provisions of the Army Act, the power to recapture shall be exercisable only for a period of one month from the date of escape—section 36.

(3) The commissioner of Police, Madras, may perform all acts which the Magistrate is authorized or required to do by section 14 or 15 or 16, and all duties which an officer in charge of a police station is authorized or required to perform may be performed in the town of Madras by an officer of the police force not below the rank of an Inspector.

Treatment of Lunatics.

Under S. 13 (2), it is the duty of every officer in charge of a Police station immediately to report to a first-class Magistrate any instance of a lunatic within the limits of his station not being under proper care and control or being cruelly treated or neglected by any relative or other person having the care of such lunatic. When a person arrested as a lunatic is being taken to the Magistrate, he may be confined in Police lock-ups or sub-jails if no other place of safe custody is available. After his production, it will rest with the Magistrate to prescribe the place of detention. Criminal Lunatics shall be confined in sub-jails or district jails according to the stage of the inquiry. When a lunatic is sent to an asylum, the Magistrate or Police officer who despatches the person is responsible that the escort is provided with sufficient means to provide such articles as milk, coffee, biscuits, or any suitable cooked food for the use of the insane during his journey to the asylum. In case the insane refuses food or becomes sick, he should be taken to the nearest hospital. Every female insane should be accompanied by a female attendant, or relative, in addition to the usual Police escort. Criminal lunatics, recovered and unrecovered, when sent by rail should not be

allowed to mix with other passengers, but should be placed with their escort or attendants in a separate compartment. When required by a Magistrate, the Police shall obtain and furnish the information necessary for the compilation of a lunatic's medical history sheet. The Police should furnish the medical officer to whom a lunatic is sent for observation, with all available details as to his previous history and the alleged causes of his insanity. P. O. 593. See Chapter XXXIV Ss. 464 to 475 Cr. P. C.

Procedure of magistrates on acquittal of Lunatics and in keeping them in safe custody.

Under the new Cr. P. C., the Magistrates or Courts are no longer required to report cases under S. 471 (1) Cr. P. C, for the order of the Local Government, but are themselves competent to direct the reception of a criminal Lunatic into any asylum which is prescribed for the reception of criminal lunatics. They shall have to report only the action taken to the Local Government. The order for the detention in the asylum shall be made in accordance with such rules as the Local Government may have made under the act.

The Indian Police Act V of 1861.

Object of the Act.

Police Act does not deal with the punishment of offences. It merely deals with the powers of superior Police officers in regard to the control of their subordinate officers. Under that Act the controlling authorities are empowered to punish not offences but acts of negligence.

Sections extended to Madras Presidency.

The following sections of the Indian Police Act V of 1861 have been extended to the Madras Presidency by the Government of India Notification No. 728, dated 31st October 1825:—

Quartering of additional Police in disturbed or dangerous districts.

(1) It shall be lawful for the Local Government, by proclamation to be notified in the official gazette and in such other manner as the Local Government shall direct, to declare that, any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of Police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such inquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government, by order, to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

Explanation:—For the purposes of this section 'inhatants' shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein. S. 15.

Awarding compensation to suffers rom misconduct to inhabitants or person interested in land.

(1) If, in any area in regard to which any proclamation notified under the last preceding section is in force,

death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or of any class or section of them, it shall be lawful for any person, or being an inhabitant of such area, who claims to have suffered injury from such misconduct, to make within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the subdivision of a district within which such area is situated.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government, after such inquiry as he may deem necessary, and whether any additional police force has or has not been quartered in such area under the last preceding section, to—

(*a*) declare the persons to whom injury has been caused by or has ensued from such misconduct;

(*b*) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(*c*) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section.

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the local Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the Local Government, but save as aforesaid shall be final.

(5) No civil suit shall be maintained in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation*:—In this section the word 'inhabitants' shall have the same meaning as in the last preceding section. S. 15 A.

Recovery of moneys payable under Sections 13, 14, 15 and 15-A, and disposal of same when recovered.

All moneys payable under sections 13, 14, 15 and 15-A shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court.

All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund called 'The General Police Fund' and shall be applied to the maintenance of the police force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15-A shall be paid by the Magistrate of the District to the persons to whom and in the proportions in which the same are payable under that section. S 16.

Power to compel application for licences for assembly or procession.

Superior officers have power under S. 30 of the Act to issue a general or special notice to all persons convening or collecting a public assembly on any public road, public street or public thoroughfare, or promoting, or forming a procession, that such persons must apply for a license, provided that the District or Divisional Magistrate has given an opinion that such assembly or procession, if uncontrolled is likely to cause a breach of the peace.

Deputy Superintendents of Police are empowered to perform all the duties of a District Superintendent of Police

under S. 30 and 30-A of the Act in the district to w hich they are posted as deputy superintendents. G. O. 2083 Judicial dated 14th December 1907.

They have the power to give notice in the case of any assembly or procession that the use of music must be under license, such licenses being issued by themselves. The last mentioned notice must not be issued generally to all the inhabitants within their jurisdiction, but must only be issued when it is known that it is intended by any persons, or any class of persons, to convene or collect an assembly or to form a procession, and must be a notice addressed to the persons convening or collecting such assembly or directing or promoting such procession. P. O. 391.

The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares and prescribe the routes by which, and the times at which, such processions may pass.

He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly on any such road, street or thorougfare, or to form a procession which would, in the judgment of the Magistrate of the district or of the subdivision of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or promoting such procession shall apply for a license.

On such application being made he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to the section.

Provided that no fee shall be charged on the application for, or grant of, any such license.

He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. S. 30.

Any Magistrate or District Superintendent of Police or Assistant Superintendent of Police or Inspector of Police or any police officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly violating any of such conditions laid as aforesaid to disperse.

Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be unlawful assembly. S. 30-A

It shall be the duty of the Police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing places, and at all other places of public resort, and to prevent obstruction on the occasions of assemblies and processions on the public roads and in the public streets or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghat, or landing place may be thronged or may be liable to be obstructed. S. 31.

In every case in which the Police use fire arms in suppressing a riot or in self-defence, an express report or telegram whichever is quicker, shall be sent to the Divisional Magistrate. In this report the number of persons killed or injured, if any, shall be stated. P. O. 394. [See also page 8 of Vol. I.]

When a police party is formed for dispersing an unlawful assembly it should be numbered and told off into two or more sections, if the size of the party and the time available admit of it. Bayonets must be fixed as soon as possible. All commands to the police are to be given by the officer in command of the party. The Police are not, on any account to fire excepting by word of command of their officer, who is to exercise a humane discretion respecting the extent of the line of

fire. As soon as he thinks it may be necessary to resort to the use of firearms the officer in command will give the order to load, with buckshot or ball according to his discretion, or some files with buckshot and others with ball, and will bring the men to the loading position. This will prevent the party being rushed while the crowd is being warned.

Note :—Blank cartridge is never to be served out to a Police party detailed for the suppression of a riot.

In order to guard against all misunderstanding, officers commanding Police parties are, on every occasion when employed in the suppression of riots or enforcement of the law, to ensure that the fullest warning is given to the mob before any order is given to fire and to take the most effectual means to explain beforehand to the people opposed to them that, in the event of the Police party being ordered to fire, their fire will be effective. If after being warned the mob refuses to disperse, the order to fire may be given. If the officer in command of the party is of opinion that it will suffice, he will give the order to fire to one or two specified files only. If, however, he considers that this will be insufficient, he will give the word of command to one of the sections told off as above, the fire of the other sections being held in reserve until necessary. The fire of each section will be given by the regular word of command of the officer in charge of the party. Under no circumstances should a warning shot be fired in the air, nor should the fire be directed over the heads of the crowd. The greatest care shall be taken not to fire upon persons separated from the crowd. Firing should cease the instant that it is no longer necessary. Files or sections ordered to fire shall re-load immediately after firing without further word of command until the order to cease firing is finally given.

Power; when breach of peace anticipated.

When a breach of the peace is anticipated, the Police should take timely action under the preventive sections of chapters XI and XII Cr. P. C., and under the provisions of

S. 30 and 30 A of the Act. In a serious emergency, recourse should be had to the appointment of special Police officers under S. 16 of Act XXIV of 1859. P. O. 390.

Police to prevent offences in general.

There is no authority for the proposition that the Police are empowered to prevent only cognizable offences. Some color is given to the proposition by S. 149 Cr. P. C. which provides only for the prevention of cognizable offences by the Police. But S. 23 of the Act appears to give wider powers for preventing offences in general. The word "offences" in that section is not defined in the Act, and it does not appear to be governed by the definition of offence, in S. 40 I. P. C., which is enacted in the previous year 1860. 8 L. B. R. 329, 17 Cr. L. J. 347, 35 I. C. 523. See page 12 of Vol. 1, for the definination of "offence".

In any town to which S. 34 has been extended any police officer may arrest without warrant any person who, within his view, causes obstruction, inconveiniance, annoyance, risk, danger or damage of the residents or passengers, on any road or in any open place or street or thoroughfare within the limit of the town. For Cognizable offences under the Act see page 54 & 55 of part 1.

Instruction to regulate the enrolment and employment of Special Police officers in the Madras Presidency.

Object; in appointing special constables.

The only legitimate object of appointing special police constables is to strengthen the ordinary Police force by the addition of suitable persons. When no instructions for the performance of any kind of Police duty were issued to them and the circumstances showed that it was never really intended to employ them as Police officers, held their prosecution under S. 19 of the Act for refusing to serve as special constables was illegal. 43 C. 277; 20 C. N. 855; 17 Cr. L. J 197; 34 I. C. 309.

Enrolment and employment of special Police officer.

Officers empowered to enrol special police officers should encourage voluntary enlistment before resort is made to compulsory enlistment under the Police Acts.

When breaches of the peace are threatened, the Government has a right to call on any residents in the immediate neighbourhood to assist the Police in the discharge of their legitimate duty of preserving the public peace. If the assistance of special Police is desired, they can be appointed by the nearest Magistrate under S. 16 of the Police Act. XXIV of 1859, upon application by a police officer not below the rank of Inspector who is empowered to make the application under that section. It is then the duty of the Magistrate to appoint as many persons and for such time and particular work as the Police officer thinks necessary. When there is time, the Magistrate shall forward the list of Special Police officers for previous sanction of the sub-divisional Magistrate and in any case shall submit a copy to that officer.

Every Circle Inspector shall maintain a list of residents suitable for such duty at each considerable place in his circle in order that he may be able at any moment to give the Magistrate the necessary details to enable him to appoint without any delay as many special Police officers as may be necessary. In the City of Madras the list of persons liable to be called out shall be prepared by the Commissioner of Police who may, of his own authority, appoint persons as special Police officers under S. 17 of the Madras City Police Act, 1888.

Each special Police officer shall receive a written order signed by the Magistrate specifying the place and the hour at which he must attend and shall also be given a suitable badge of office on being called out. A list of all special Police officers thus appointed shall be hung up in the local Police station. The place of muster which need not necessarily be a Police station, shall be attended at the specified time by an officer not lower in rank than a sub-inspector who shall check the attendance of special Police officers and allot their duties in writing specifying the hours of duty and its nature.

The number listed shall always be large enough to allow of short hours of duty and frequent reliefs. A separate list shall be maintained by circle Inspectors of men of influence

and good standing who can when necessary be appointed checking and supervising officers. Persons selected as special Police officers should as far as possible be leading and influential men whose authority is likely to be respected in their neighbourhood.

An order under S. 17 of the Act appointing certain persons as special constables is of an executive nature and not open to revision under S. 435 Cr. P. C. 18 Cr. L. J. 900, 42 I. C. 132, reference 10 C. W. N. 82, 322; 34 I. C. 309; 35 C. 454.

The Opium Act I of 1878.

Definitions.

Opium is not defined in the Act, but is said to "include also poppy heads, preparations and admixtures of opium, and intoxicating drugs prepared from the poppy"; unless there is something repugnant in the context.

In the rules opium is defined as "the inspissated" (i. e., congealed) "juice of the poppy." Preparations manufactured from it are called generically "intoxicating drugs" which are said to "include madak and chandu and every preparation thereof and kafe" (cloth saturated or stained with opium), "and every other preparation of opium or the poppy (e. g., morphia) but not poppy heads. Poppy heads are said to mean "unlanced capsules," and not to include "dry capsules from which the opium has been extracted".

Amount to be possessed.

The amount of opium which may be possessed without a license is one tola, except in Agency tracts where it is three tolas.

Powers and duties.

Police-Officer above the rank of Constable. On personal knowledge or on information given, and recorded in writing, that opium liable to confiscation is manufactured, kept or concealed in any place, to enter such place between sunrise and sunset, and, in case of resistance, break open any door or remove any obstruction and to search for and seize any such opium and arrest offenders. S. 14.

Any Police Officer.-To seize opium or any other thing liable to confiscation in any open place or in transit and detain

and search any person whom he believes to be guilty of an offence under the Act, and, if opium is found in his possession, arrest him and any other persons in his company. S. 15. See also Pages 57—58 of vol. 1. Persons arrested or things seized under section 14 or 15, must be forwarded without delay to the officer in charge of the nearest Police station who will at once act in the matter according to Law. S. 20.

Searches under the Act are made under the Criminal Code. Vexatious and unnecessary searches, etc., make the officer offending liable to a fine of Rs. 500. Ss. 16 and 18.

Any police officer has a legal right to demand aid from, and is bound to give aid to, any officer of the Excise, Customs, Salt, Opium or Revenue departments in carrying out the provisions of the Act and rules under it. S. 17.

Examination of opium in transit.

Any Revenue Officer not inferior in rank to a Revenue Inspector, any Salt, Abkari and Customs officer not inferior in rank to a Sub-inspector or any police officer not inferior in rank to a Head Constable may at any time examine any consignment of opium or intoxicating drugs in transit. If, after such examination, the officer finds that the quantity of opium or intoxicating drugs transported corresponds with the quantity specified in the pass the consignment shall be allowed to proceed. Otherwise the consignment shall be retained pending the orders of the Collector.

Under S. 20 of the Act, all offences under the Act coming under Ss. 14 and 15 thereof have to be investigated by the Police. A copy of the First Information Report should be sent without delay to the Inspector of the Circle of the Salt and Abkari Department and should contain the identification marks of the accused. Notice of the dates of hearing of such cases and of appeals in them should also be communicated to the Salt and Abkari Inspector to enable him to afford any assistance to the Police. P. O. 267. vide page 17 of Vol. 1. (Registry in first information report book).

An offence under S. 9 of the Act is Non-cognizable and therefore a Police officer cannot arrest without

warrant, and he has therefore under S. 155 Cr. P. C., no authority to investigate such an offence without the order of a Magistrate, nor under S. 165 Cr. P. C., can he make a search in respect of it. 24 C. 691; see also 27 C. 144. Contra 48C. 1161.

On a prosecution and conviction of the accused on a report of an excise Sub-Inspector under S. 9(c) of the Act, Held, that the proceedings before the Magistrate were irregular, as there was no regular complaint before him, and even if there was, his omission to examine the complainant on oath as required by S. 208 Cr. P. C., was an irregularity which vitiated the proceedings. 20 Cr. L. J. 742; 58 I. C. 150.

In the opinion of the Advocate General Madras, the case reported in 24 C. 691 turned entirely upon the language of S. 24 of Act XIII of 1857 and the learned Judges say that under that section what was conferred was merely a right to take a person into custody if he cannot give bail. This is very different indeed from the power given under S. 15 of the Act. S. 4(f) Cr. P. C., as well as S. 4(n) enact that cognizable cases are those in which a Police officer may arrest without warrant. Turning to the Act, S. 15(b) gives a power of detention and search and also of arrest. Comparing it with S. 19 of the Act, it is obvious that any officer of the specified Departments may arrest under S. 15(b) without a warrant. The case reported in 43 C. 1161 makes it abundantly clear that in the opinion of the learned judges who decided that case, there could be no doubt about the legality of the arrest without a warrant. He is thus of opinion that offences under the Act are cognizable and that the Police had power to investigate the same. Madras Criminal Intelligence Gazette. Vol. X No. 20 dated 27th July 1922.

A Sub-Inspector acting under S. 14 of the Act has no right to enter the premises after sun-set. 20 Cr. L. J. 742.

A mere illegality in the exercise of a right of search under the act is not itself a sufficient ground for setting aside a conviction. 20 Cr. L. J. 745; 58 I. C. 153; 2 M. 124; 31 C. 557; 35 A. 358.

A Magistrate taking cognizance under the Act has no power to commit the accused to the court of Sessions. 19 A. 465 ; 5 M. H. C. R. 277.

The words "specially empowered" in S. 3 of the act, mean that the Magistrate should be empowered by name or by office. 28 I. C. 156 ; 17 M. L. T. 191 ; 1915 M. W. N. 269; 5 Cr. L. J. 145 ; 2 L. W. 233.

A District Magistrate who is also a collector is not debarred from trying cases under the Act, the prosecution of which has not been instituted by himself, as collector. 1 Bur. S. R. 400. A Magistrate in charge of the excise and opium adminstration of a district is not "personally interested" in the observance of the provisions of the Act. He is therefore not precluded from exercising jurisdiction in respect of offences against the Act. 15 A. 192, 13 A. W. N. 79 Foll 22 A. 340; 27 A. 88.

Morphia is not included in the definition of opium under the Act and the sale or transport of morphia without a license though contrary to the rules is not an offence under the Act. 59 I. C. 40 , 22 Cr. L. J. 8 ; 59 I. C. 40.

There is a clear distinction between use of morphia in practice by an approved medical practitioner and sale of morphia by him to his patients. A sale by him is punishable under S. 9 of the Act. 24 C. W. N. 343 ; 21 Cr. L. J. 497 ; 56 I. C. 657.

To convert opium into "chandu" is not manufacturing opium within the meaning of S. 9. P. R. 9 of 1881.

Under the amended R. 38(2) of the rules framed under the opium Act the amount of chandu which two or more persons may without license at one time possess collectively is limited to 1 tola. 19 Cr. L. J. 686 ; 46 I. C. 46.

A person possessing a black substance with traces of opium hardly more than 1 p. c. cannot be punished for illegal possession of opium if the thing is unfit to be used as opium.

20 C. W. N. 1206; 17 Cr. L. J. 412; 35 I. C. 972. When a person has dealt with opium in any of the ways given in S. 9, the burden of proving that he has a right to do so, falls on him, but the commission of an act which may be an offence, cannot be used to establish that fact. 37 C. 581; 14 C. W. N. 710; 12 C. L. J. 19; 11 Cr. L. J. 256; 6 I. C. 173. Contrary to the conditions of his master's opium license the sales-man sold opium to a person, under the age of fourteen years in the absence of the master. Both the master and the salesman were convicted. 14 I. C. 666; 34 A. 319; 24 B. 423 fol. Possession of opium on behalf of a master who is not entitled to possess is no plea against S. 9 of the Act. 2 M. W. N. 267, 4 L. W. 373; 17 Cr. L. J 384; 35 I. C. 816. It is always necessary for the prosecution to prove affirmatively that possession by the servant was on his master's behalf and with his authority to render the latter liable for conviction. 17 Cr. L. J. 1194; 34 I. C. 306. A person (accused) in whose house the opium was found was not present at his house at the time when the opium was found in his house. He had been absent from the town for some days prior to it and returned several days after it was found in the house. Held, that in these circumstances he could not be convicted of being in possession of opium. 24 I. C. 156.

The mere fact that a passenger by boat has contraband opium with him, places no liability on the boatman to give any satisfactory account of the opium; more especially where the prosecution evidence shows that it was the passenger who had the opium; the boatman, in such a case, cannot be convicted under S. 9(c) of the Act. 22 Cr. L. J. 21; 59 I. C. 133. Possession of contraband opium is sufficient to constitute an offence under S. 9(c), and the frame of mind of the offender is immaterial. If opium is found in a boat, the owner of the boat and not the crew are said to be in possession of it. 37 C. 24; 12 Cr. L. J. 178; 14 C. W. N. 308; 5 I. C. 555. The possession of opium to be punishable must be possession with one's knowledge and assent. 13 Cr. L. J. 122; 13 I. C. 778. Possession of

the railway receipt under circumstances throwing knowledge of the contents of the parcel constitutes an offence. 36 C. 1016; 14 C. W. N. 233; 4 I. C. 699; 13 Cr. L. J. 29; 46 C. 820; 20 Cr. L. J. 629; 52 I. C. 389. Where the post office suspecting a parcel to contain opium, marks it doubtful and sends it on to the place of despatch S. 9(e) has no application as the parcel ceased to be in the post office on accused's account, before it left India, for Burma. 12 Cr. L. J. 116; 9 I. C. 682. The owner of a house where a locked up box of opium has been left by another is in illegal possession of the opium. 1 M. W. N. 361; 12 Cr. L. J. 184; 9 I. C. 1019. The accused admitted befofe the excise Inspector that the opium found in his almirah belonged to him, this statement amounting to a confession in the case was held to be admissible against him since the excise officer was not a Police officer. 44 I. C. 588; 19 Cr. L. J. 364. A person can be convicted for a breach of the rules passed under S. 9 of the Act only when he does some act in contravention of such rule and not merely for contemplating such violation. 15 Cr. L. J. 667; 25 I. C. 995. An infraction of a condition of a license cannot be considered an infraction of the rules made under the opium Act and punishable under S. 9. Rat Un. Cr. 860. A person who, under a license granted to him, may sell opium by retail in accordance with the conditions specified in his license, does not, by keeping an incorrect or false account make himself liable for any breach of any of those conditions to a penalty under S. 9 of the Act. 3 C. W. N. 365, 26 C. 571 Dist. 1 A. L. J. 245. But he may be considered guilty of a breach of the rule. Rat. Un Cr. 297. An order for confiscation passed under S. 11 of the Act without giving the owner of the property an opportunity of being heard is illegal and must be set aside. 9 I. C. 587; 15 C. W. N. 296.

An unlawful possession of opium with the intention of eventually exporting it does not by itself amount to "exporting" opium under S. 9(e) of the Act.

Opium which is being carried from place to place is "transit" even when the boat is temporarily anchored or fastened. 10 Cr. L. J. 85; 2 I. C. 546.

The Indian Treasure Trove Act VI of 1878.

Powers and duties.

The Police have absolutely nothing to do with the working of the Act. They will report the discovery of treasure trove, or the rumor of such a discovery, to the District Superintendent or Subdivisional Police-officer as an ordinary matter of occurrence, and will refrain absolutely from interfering with either the finder or his treasure trove, or with any person claiming a share or right to it. The Superintendent will report to the collector any information that may reach him on such matters. The village Magistrates and Tahsildars are the proper persons to attend to public interests involved in these matters. Offences against the Act, when referred to the Police for inquiry by a competent Magistrate must, of course, be investigated by them.

Third class Magistrates have no jurisdiction to try offences punishable under S. 20 of the Act. 2 Weir. 23. This is no longer law, having regard to the addition now made to S. 11 under the heading "offences against other laws". Ratanlal 763.

Finders of treasure.

Where the treasure is found by certain coolies and not by the accused, the accused could not be convicted of an offence under S. 20 of the Act. If at all he could be convicted only of an offence under S. 21 of the Act. 6. Cr. L. J. 382. Persons who find a treasure in the course of doing work for an employer are finders of treasure. 27 M. L. J. 477; 25 I. C. 640; 4 Cr. L. R. 256. Where petitioners discovered treasure while cutting a tree under the orders and in the presence of the employer who at once assumed control over it. Held, that the petitioners were nevertheless 'finders' under S. 4 of the Act. 27 M. L. J. 477; 15 Cr. L. J. 632; 25 I. C. 640. A usufructuary mortgagee is owner; the forbidding of a person who was not the finder or a person employed or instructed by the finder to give notice on his behalf is no offence. 15 A. L. J. 796; 19 Cr. L. J. 35; 42 I. C. 995. Persons other than the owner of the place who abet an offence, under S. 20 of the Act are punishable under the penal code. 1 Weir. 919.

The Sea Customs Act VII of 1870.

Powers and duties.

Under section 180 of the Act a Police-officer who seizes articles liable to confiscation under the Act, on suspicion that they have been stolen, shall send a written notice of their seizure to the nearest custom house and after the conclusion of the case shall cause the articles to be conveyed to the nearest custom-house.

Smuggling.

The Police should exercise constant vigilance with a view to detect the existence of smuggling and will report to the nearest Sea Customs officer and the nearest Magistrate any information obtained on the subject.

Smuggling cocaine and allied drugs.

Notice should be taken of the prevalence of the cocaine habit as an indication of the existence of illicit traffic in cocaine, novocain, eucaine, betaeucaine, lactate, holocaine, or allied drugs. Endeavours should then be made to trace the source of supply. The Police at seaports and on the frontiers of foreign territory should exercise special vigilance with a view to detect the smuggling of these drugs. Information received on this subject should be communicated to the Deputy Inspector-General, Criminal Investigation Department, by the District Superintendent of Police, and no action should be taken without the Deputy Inspector-General's approval, unless immediate action is necessary. Inspectors of Police are empowered to communicate directly with the Deputy Inspector General, Criminal Investigation Department, in emergent cases.

The Act does not prohibit importing of cocaine generally, it merely prohibits its importation unless duty has been paid. The mere entry into the harbour or tying up against the dock wall is not importing goods in contravention of the obligation to pay duty. That intention and requirements can only be contravened when reasonable opportunity to pay the duty has been afforded and has been evaded. 33 B. 380; 11 B. L. R. 221; 1 I. C. 343; 9 Cr. L. J. 291.

Under the Act, the Government can prohibit the export of specified articles or things but description of different

commodities ejusdem generis under a vague description, is not enough. 40 B. 301; 17 B. L. R. 1087, 33 I. C. 205. Foll. 57 I. C. 636.

Sub-Inspector of Police is an excise officer for all purposes connected with the excise power conferred on excise officers by Ss. 36, 37 and 38 of the excise Act. 15 Cr. L. J. 336; 23 I. C. 688.

The Indian Arms Act XI of 1871.

Powers and duties.

The following are the powers and duties of all Police officers under the Act :—

(1) To arrest any person found carrying or conveying, any arms, ammunition or military stores, whether covered by a ilcence or not, in such manner or under such circumstances, as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose;

(2) To take such arms, ammunition or military stores from him;

(3) To take without unnecessary delay such person's arms, ammunition and military stores before a Magistrate. Section 12 and see page 56 (14) vol. 1.

(4) To disarm any person going armed without a licence or in contravention of the terms of a licence. Section 13.

The last named person commits an offence under section 19 (e) which is cognizable. He may, therefore, be arrested, but this should not ordinarily be done unless the circumstances require it. The case will be reported to the magistrate having jurisdiction and a process obtained.

Provisions of the Act.

(1) The offences detailed in sections 19 and 20 are cognizable.

(2) The District Magistrate's sanction is requisite to a prosecution under section 19 (*f*). Section 29.

If sanction for offence under S. 19(f) has not been obtained the proceedings are null and void. The absence of sanction cannot be treated as a mere irregularity. 9 M. L. T. 475; 1 M. W. N. 271; 12 Cr. L. J. 234, and nor does the obtaining sanction after commitment cure the omission under S. 537 Cr. P. C. 5 M. L. T. 162; 11 Cr. L. J. 190, 17 Cr. L. J. 209; 34 I. C. 321 (F. B.)

(3) Under section 28 all persons are bound to give information of offences under the Act, which comes to their knowledge.

Rules Going armed.

(1) Persons (whether licensed or not) are forbidden to go armed in railway carriages, to fairs, religious processions or other public assemblies, unless specially authorized by the officers granting the licences.

(2) Licences need not be taken out to cover the carrying or possession of arms in the following cases :—

Exempted Police-officers.

(*a*) Arms carried and possessed by officers of Government as part of their equipment. e. g., revolvers in the case of Police-officers who are required to provide themselves with such weapons under P. O. 125 A.

(*b*) Arms supplied by Government to subordinates of the Police Department to be carried or possessed by them for their protection in the execution of their duty.

Having regard to clause (*b*) of section I of the Indian Arms Act, 1878, nothing in the Act or Rules will apply to the bearing or possession of such arms by the persons referred to above.

Exemption of constabulary.

(3) With reference to section 1 (*b*) of the Act, head constables and constables are declared to be officers required to carry arms in the performance of their duty when escorting prisoners or treasure, when any serious breach of the peace occurs or is anticipated, and when they visit villages on beat duty at night or patrol high roads, and ghat talaiyaris are similarly so declared when they assist the regular Police in guarding roads and hill passes.

Note :—Police and excise officers of British India entering Travancore in the discharge of their official duties have been exempted from the operation of the prohibitions and restrictions contained in the Travancore Arms Regulation V of 1084, and similar officials of the Travancore State passing through British India on duty are covered by the exemption made in their favour by item (2) of schedule I of the Indian Arms Rules, 1920.

Licensed dealers.

(4) Under section 22 of the Arms Act, licensed dealers in arms and ammunition are bound to ascertain that the person to whom they sell arms, ammunition or military stores are legally authorized to possess the same. Any tendency on the part of dealers to evade this obligation should be checked by the Police by their constant strict supervision over the trade in arms and ammunition. The Police should also exercise constant vigilant supervision over the registers maintained by licensed dealers in order to ensure that arms and ammunition are not sold to persons other than those legally authorized to possess the same. If, on inspection, they find that arms and ammunition are supplied to persons whose exemption seems to be doubtful, they should take steps to ascertain whether such persons are really exempt from the provisions of the Arms Act, and, if not, to report the matter to the District Magistrate. In doubtful cases of sales to persons said to possess licences under the Arms Act Rules, a reference to the registers maintained in police stations will show whether the purchasers are bona fide licensees or not.

References.

The notifications of the Government of India under the Act are published in a separate pamphlet, which is supplied to all Police Inspectors and offices.

See also Police orders Nos. 124 and 146 for inspsection of licensed premises and 406 for gun licence registers. For rules for the grant and renewal of gun licences, and maintenance of gun licence registers see page 7 of Vol. II of P. O.

The expression 'going armed' as used in S. 19 was not intended to render penal the mere act of carrying arms unless there was some sort of intention of using the arms. 11 W. N. 208, 15 A. 27, 16 A. 276, 24 A. 454, 14 A. W. N. 82., but the presumption is against the person carrying arms. 15 A. 27, 1892 W. N. 221.

Arms defined.

The word arms in S. 4 includes part of arms. 20 P. R. 1900 Cr, 33 P. L. R. 1901; 42 I. C. 1153; 26 I. C. 313; 16 Cr. L. J. 9; 21 C. L. J. 201.

A weapon primarily intended for domestic and agricultural purposes, even if it can be used for purpose of offence and defence is not arm within the meaning of the Arms Act. It is the intention of the manufacturer, and not of the possessor of a weapon, as to the use to which it is put, which determines whether a weapon is an arm or not. 11 Cr. L. J. 153; 744; 4 I. C. 1028.

Whether or not any particular instrument is included in the expression "arms', used in the Arms Act, must necessarily depend on the circumstances of each case. 20 Cr. L. J. 113; 48 I. C. 486.

The appellant had a bamboo dang 5 feet 7 inches long. It had an iron detachment at the thick end, where an 8 inches long blade could be fitted by readily slipping it off and on the stick. The blade was found detached from the stick and hidden in the folds of his loin-cloth. Held (on the aforesaid facts), that the weapon was not meant for ordinary domestic purpose but for purposes of offence or defence, and that, therefore, it was included in the term "arms" used in the Arms Act. 23 Cr. L. J. 63; 64 I. C. 847. The mere fact that a weapon is dangerous and is likely to cause death if used, does not make it "arms" within S. 4. 15 Cr. L. J. 685; 26 I. C. 133. A weapon consisting of a plain lathi, a blade and a moveable screw so contrived as to make the blade detachable if necessary is not "arm", though the weapon may be described as a

pole-axe. 26 I. C. 133. An air-gun which is not adopted for use with explosive substances and which has been classed as toys by the Government does not come within the meaning of the Act. 4 Cr. L. J. 239. An order for the deposit of a spear under the provisions of the Act is illegal as there is no provision under it. 29 I. C. 544; 6 Cr. L. R. 72; 16 Cr. L. J. 528. Empty cases fall within the definition of ammunition. Therefore a conviction for the possession of such cases is legal. 7 B. L. R. 474; 32 A. 152; 7 A. L. J. 102; 4 I. C. 405; 10 Cr. L. J 573. The manufacture and possession of fireworks, including rockets which are mere fireworks, without a license, is not prohibited by S. 5 of the Act. The rockets referred to in S. 4 are war rockets. 5 M. 159; 1 Weir. 655 Dist. 8 M. 202. It is not necessary that an arm or a part of an arm should be in serviceable condition before it can fall within the definition contained in S. 4. 25 Cr. L. J. 539; 77 I. C. 1003 Possession of such a weapon without a license is an offence. 21 M. 360 over-ruled 6 M. 60. As a gun barrel and nipple in serviceable condition fall within the definition of "arms," the possession of such article without a license is punishable. 7 M. 70. A revolver out of repair is an arm within the Act. 7 Cr. L. J. 350. Lead is exempted from the operation of S. 4 but when it is moulded into bullets, of 20 to 24 bore, it is ammunition. 21 M. 360; 11 C. L. J. 421. Where the mere possession of arms was made an offence in a certain district, the accused would be punished for the illegal possession, if there were satisfactory evidence that the persons were in possession of arms, notwithstanding that the police might have also committed an illegality in their procedure in conducting the search. 2 N. W. P. 57. The possession of sword or dagger or bayonet in a district which has not been disarmed, the possession of them without license is not an offence, unless the person in possession goes armed with it. 1 Weir 664.

Illegal possession.

A person in unlicensed possession of gunpowder is liable to be convicted although he may intend to employ the

powder in the manufacture of fire-works or other harmless purpose 8 M. 202, 1 Weir. 664.

S. 19 deals with breach of Ss. 5, 6, 10, 13 to 17. An offence under S. 19 (c) is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country, the intention of the offender is not to be considered. 35 M. 596. 17 I. C. 408, 13 Cr. L. J. 776.

A son of an exempted person was found in possession of arms belonging to his father, it was held that he was liable to conviction for an offence under S. 19 (f) and it was not open to objection. 40 A. 420. The delivery into possession contemplated by S. 22 of the Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it; but not when a master goes home leaving the servant to watch the same. 3 I. C. 712; 10 Cr. L. J. 361. The mere temporary possession without a license of arms for purpose other than their use as such is not an offence within the meaning of S. 19 when a licensee gives a pistol to an acquaintance to take it and get it repaired in a neighbouring town and he was arrested and charged under S. 19 held that under the circumstances he was guilty of no offence. 13 Cr. L. J. 860; 24 A. 456; 37 B. 188; 17 I. C. 769.

Where a servant who was in possession of a gun of his master used for his own purpose, it was held to be acting in infringement of the terms of S. 19 (f) although it belonged to his master who had license, and who had lent it to the accused. 13 C. W. N. 124; 4 I. C. 333; 10 Cr. L. J. 555. A person exempted from the provisions of the arms Act can send a servant armed with his gun to shoot for him. 18 Cr. L. J. 297; 38 I. C. 329; 13 C. W. N. 124 R. 22 A. 118 (F. B.); 51 I. C. 208; 20 Cr. L. J. 432.

A minor, who has in his custody and under his control arms without a license is guilty of an offence under S. 19 (f).

There is nothing in the Act to prevent a minor being guilty of an offence thereunder. 16 A. L. J. 323; 40 A. 420; 44 I. C. 975; 19 Cr. L. J. 447.

An unlicensed pistol was found in the shop of one C who had been absent from his place for some days, leaving the shop in charge of his servant H. There was nothing to show that the pistol was a sort of article that one could reasonably expect to be for sale in that shop. Both the master and the servant were convicted under the Arms Act, the Magistrate holding that the pistol being found in the possession of the servant must be deemed to have been in possession of the master under S. 27 I. P. C., held that it was not proved in this case that the possession of H. was on account of C and that, therefore, the conviction of the latter could not be upheld. 23 Cr. L. J. 729, 69 I. C. 457.

Two persons were lying on a bed in the house of a third person and a chavi was found in the bedding wrapped in a piece of cloth. Held, that even if it were assumed that the chavi did not belong to the owner of the house, these two persons could not be convicted of an offence under S. 19 of the Arms Act, inasmuch as it could not be said which of them was actually in possession of the chavi. 23 Cr. L. J 95; 65 I. C. 447.

If the place in which an article is found is one to which several persons have equal right of access it can not be said to be in the possession of any one of them and the conviction of the accused could not be sustained. 21 C. W. N. 839; 18 Cr. L. J. 781; 41 I. C. 157. A collection of fire arms had been kept as objects of worship in a temple for upwards of two centuries no license was taken out. Police searched the temple, the mahunt was charged and convicted. On reference the Patna High Court has held the conviction of the accused was not illegal. There is nothing in the Act to exempt the custodian of a temple from complying with the requirements of the Act. 8 C. 473.

S. 20 of the Act does not apply to ordinary cases of concealment of arms, but where export or import of arms is attempted. 14 Cr. L. J. 41; 18 I. C. 265.

S. 20 of the Act is applicable to a case of possession of an arm contrary to the provisions of the Act. Concealing an arm in a waist band or loin cloth is held to be a possession. 16 Cr. L. J. 412, 28 I. C. 796.

A person carrying a revolver in his pocket without a license, is guilty only under S. 19 (f) of the Act and not under S. 20 for concealing the arm. Held also that, where arms were found in possession of one of the two men sitting together and it was proved that at one time the revolver was possessed by the other, both are guilty of possessing the arms without a license. 16 Cr. L. J. 637; 30 I. C. 461.

Accused was convicted under S. 19 for carrying a gun in a marriage procession. Under the terms of the license, the licensee was forbidden to take the gun to a public assemblage, and it was contended that a marriage procession was not such an assemblage. Held, that the conviction was justified, as the marriage procession was a public assemblage, because the moment such a procession emerges from private premises and goes down the public street, it is open to the public to join the procession, and the procession becomes a public assemblage. 23 Cr. L. J. 450; 67 I. C. 722.

Where in the course of his statement an approver in a case of gang dacoity discloses the fact of being in illegal possession of a carbine and some ammunition, which were used by him as implements of his trade of crime, and having fulfilled the conditions of his pardon is released. It is illegal on his release to prosecute him for an offence under S. 20 of the Act. 63 I. C. 827; 22 Cr. L. J. 699.

Where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact at the time of the finding in the exclusive

possession and control of one member of the family, that member of the family can properly be held to be in possession of such arms. 28 A. 302, 26 A. W. N. 11 Expld. 12 A. L. J. 15, 21 I. C. 1002. The question of exclusive possession cannot be raised for the 1st time in appeal. 24 I. C. 594; 15 Cr. L. J. 506.

Any person, possessing arms, ammunition or military stores the permission whereof has in consequence of the cancellation or expiry of a license or any exemption or by issue of a notification under S. 15 or otherwises become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest Police station, or at his option and subject to such condition as the local Government may by rule prescribe, with a licensed dealer. S. 16.

The license need not be always on the person of the bearer of the arm, it is sufficient if he can show the license if opportunity is given to him. 20 C. 444.

The depositor may be entitled to receive back anything so deposited, the possession of which by him has become lawful and dispose or authorize the disposal, of anything so deposited by sale or otherwise to any person whose possession of the same would be lawful and to receive the proceeds of any such sale, provided the confiscation of which has not been directed by the convicting court or Magistrate under S. 24 when he is convicted of an offence punishable under this Act. S. 16.

Arrest.

S. 19 (e) of the Act, though cognizable, the accused should not ordinarily be arrested unless the circumstances require it. The case will be reported to the Magistrate having jurisdiction and a process obtained. The procedure under S. 57 Cr. P. C., to be adopted.

Searches for Arms.

Under S. 12 of the Act any person may arrest for carrying arms and ammunition under suspicious circumstances.

Searches for arms are of two kinds—(a) under S. 25, (b) under the Criminal Procedure Code. S. 30.

A search under S. 25 can be made irrespective of any offence committed under the arms Act. In this case if a Magistrate has reason to believe (i) that a person residing within the local limits of his jurisdiction has any arms, ammunition or military stores in his possession for any unlawful purpose; or (ii) that such person cannot be left in possession of any such arms, etc., without danger to the public peace he may, after having recorded the grounds of his belief cause a search to be made and seize and detain the same, although covered by a license, in safe custody as long as he thinks necessary. Such searches must be conducted by or in the presence of a Magistrate or Police officer not below the rank of Inspector. Notification dated 24th March 1879.

Searches made for arms under the Criminal Procedure Code, in the course of proceeding in respect of offences punishable under S. 19 (f). It must be made in the presence of an officer of or above the rank of Sub-Inspector. S. 30 and notifications Nos. 1874 and 1875 P. D, dated 17th October 1908.

Note :—These restrictions would not of course apply to searches made under the Criminal Procedure Code in the course of investigation into offences under other acts, in which the investigating officer considers the production of particular arms or weapons necessary, e. g., a search for a weapon with which a murder has been committed.

A Sub-Inspector of Police in charge of a Police station is specially empowered by the Local Government in virtue of his office to make a search in respect of an offence punishable under Cl. (f) S. 19 of the Act. S. 30 of the Act. 16 A. L. J. 721; 19 Cr. L. J. 949; 47 I. C. 891.

A search for the purpose of discovering arms generally in a certain place is not authorised by S. 165 Cr. P. C. 8 C. L. J. 75 Affd. 13 C. W. N. 458, 12 C. W. N. 973; 36 C. 433; 440.

It is to be noted that S. 26 of the Act does not override S. 165 Cr. P. C. 114 P. L. R. 1903. A search for arms,

without the previous sanction required by S. 29 of the Act and without a search-warrant is improper as not being covered by the provisons of S. 25 of the Act or S. 165 Cr. P. C. 17 C. 692.

Where an officer conducts a search for arms without complying with the preliminary condition prescribed by the Act he cannot defend his action under that statute. 39 C. 953 (P. C.) 16 I. C. 501, 12 M. L. T. 171; 23 M. L. J. 32; 16 C. W. N. 865; 1912 M. W. N. 760; 14 B. L. R. 717, 16 Cr. L. J. 231; 39 C. 953.

A station-house officer may himself apply to the District Magistrate through the Circle Inspector to sanction the initiation of prosecution under S. 19(f) of the Indian Arms Act. P. O. 353 A.

All offences against the provisions of the Act may be enquired into or tried in a Presidency town, whether the offence is stated to have been committed within such town or not. Provided that the offender and all the witnesses necessary for the prosecution are to be found within such town. S. 184 Cr. P. C. No Magistrate of the second class has the power to try an offence under S. 19(e) of the Act. 1 Weir. 660.

Where a person is discharged under S. 20 of the Act for want of evidence of intention to conceal his secret possession of arms in contravention of S. 14 or 15 of the Act, proceedings may be instituted against him under S. 19 (f) after sanction thereto is given under S. 29 of the same Act. 17 Cr. L. J. 209, 34 I. C. 321.

Penalty for breach of rule.

Any person violating any rule made under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or Military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed together with the other contents of such box, package or bale shall be confiscated. S. 21.

Confiscation of a gun for delay in renewing the license is illegal. The proper order in such case will be to impose fine and retain the gun in the Police station until renewal of the license. 22 I. C. 165; 3 Cr. L. R. 361; 15 Cr. L. J. 21.

The Madras Forest Act V of 1882.

Power and duties.

1. It is the duty of all Police-officers under the Act to prevent the commission of any forest offence (section 53). They shall seize timber, forest, produce, etc., in respect of which there is reason to believe an offence has been committed, and immediately report the seizure to the magistrate having jurisdiction (section 41). They shall also obtain the correct name and residence of any person accused or reasonably suspected of having committed a forest offence; failing which they may arrest him if the offence is punishable with imprisonment for one month or more (section 51). They should impound cattle found grazing on prohibited lands or doing damage to plantations (section 57). They should aid Forest Officers in preventing and detecting forest offences and in enforcing observance of rules which may be issued from time to time.

2. Offences against the Act are non-cognizable and cannot be investigated without the order of a Magistrate of first or second class, but grave offences, such as mischief by fire or theft, should be taken up at once under the proper sections of the Penal Code (section 54). In every case in which the Police report forest offences to a Magistrate, the local Forest officer should be at once informed of the fact in order that he may report to his superior officer.

Vexatious or unnecessary seizure of property or arrest by a forest officer or Police officer, is punishable under S. 25 of the Act. When the offence is compoundable under the Act and the accused paid a certain sum as compensation to the higher authorities, no further proceeding can be taken against the accused. 37 M. 280; 15 Cr. L. J. 680; 25 I. C. 1008.

The term "forest produce" includes forest grass and the use of such grass by grazing cattle on lands reserved is prohibited by the forest rules and a conviction for such unlawful grazing is sustainable. 4 L. W. 552; 17 Cr. L. J. 534; 36 I. C. 582. Where four persons form a party and go without a permit to a reserved forest with the object of hunting, but two of them do not actually shoot, still the latter are punishable. 19 Cr. L. J. 10; 42 I. C. 922; 15 A. L. J. 824; 40 A. 38.

Hunting and killing a tiger in a reserved forest even though it be for killing the tiger which killed the cattle of the accused, amounts to hunting. 42 B. 406; 19 Cr. L. J. 610; 45 I. C. 514.

The levy of fines, under S. 12 of the cattle trespass Act, is not a bar to a prosecution under S. 21(d) of the Act, in as much as the fines under the former Act are not imposed by way of punishment for an offence, of which the owner of the cattle that were impounded was convicted. 1 Weir 763.

Possession of wood by a forest officer, who is a servant of Government, is possession of the Government itself, and a dishonest removal of it, without payment of the necessary fees from his possession, albeit with his actual consent, constitutes theft, if that consent was unauthorized or fraudulent. 1 B. 610. A forest officer is a public servant and any information given to him with the intent mentioned in S. 182 I. P. C., is punishable under that section, whether the information is volunteered by the informant, or is given in answer to questions put to him by that officer. 10 B. 124 Appr. 28 B. 533.

The owner of cattle cannot be convicted in the absence of evidence that he either pastured the cattle, or permitted them to trespass on the reserve. 15 M. 156; 1 Weir. 763. In the absence of any express provision to punish an accused for violation of the rules of the Act, the accused should be tried under the penal code. 4 P. R. 1869. The mere possession of a flint and steel within forest limits does not constitute

an offence under S. 25(c) of the Act of 1878. 4 B. L. R. 935. A seizure of cattle by a forest officer found straying in a reserved forest is legal, even though no damage has actually been done. 22 B. 933; Cr. R. 35 of 1897. Logs of wood when they have become part of a house, and permanently fastened to a building attached to the earth, cease to be "timber" and are therefore not liable to attachment. 9 M. 373. Where in a prosecution under S. 26 of the act the accused paid Rs 2 by way of compensation to the village monegar for the forest authorities and the Magistrate notwithstanding this convicted him, held, that the conviction was illegal as S. 53 provides that on such payment no further proceedings shall be taken against such person which includes proceedings in progress as well. 37 M. 283; 25 I. C. 1008. No more than a nominal sentence should be passed in a case of quarrying in a reserved forest without permit but under a belief that it is legal and without a dishonest motive. 9 M. L. T. 216; 12 Cr. L. J. 99, 9 I. C. 567. A conviction under S. 26 without enquiring into the existing rights of the villagers to graze their cattle and cut fuel is illegal. 22 M. L. T. 211; Foll 19 Cr. L. J. 600, 45 I. C. 504. Under S. 26 with rules thereunder, a right of free grazing vested before S. 26 applied is not affected by notifications under the Act. The second clause and the rules thereunder are valid. 22 M. L. T. 211; 6 L. W. 428; 18 Cr. L. J. 996; 42 I. C. 724.

A Second appeal to the High court is maintainable under S. 100 of the civil procedure code from the decision of a Dt. Judge under S. 10 of the Act on appeal from the decision of the forest settlement officer. 39 M. 617, 31 M. L. J. 324, 29 M. L. T. 435. 35 I. C. 902; 25 Cr. L. J. 69. See also 37 I. C. 794; 41 M. 554; 50 I. C. 222, 23 C. W. N. 201.

A charge under R. 8 of S. 26 of the Act, must clearly state that the place wherefrom the accused cut a tree was a "reserved forest". The omission to state this is a material defect and vitiates the trial. 13 Cr. L. J. 504; 15 I. C. 648.

The words 'no further proceedings shall be taken', in S. 53 of the Act mean that proceedings in progress must lapse. 37 M. 280; 15 Cr. L. J. 680; 25 I. C. 1008.

The Madras District Municipalities Act IV of 1884.

Powers and duties.

1 Under section 282 of the Act every Police-officer shall give immediate information to the Municipality of any offence against the provisions of the Act or the bye-laws made under it, and shall help in giving effect to the provisions of the Act in such manner and at such times as may be necessary.

2 Any Police-officer may arrest a person committing an offence against the Act in his view, if the name and address of such person be unknown to him and if such person declines to give his name or address or gives a name or address of doubtful accuracy. Such person shall be detained in the police station until his correct name and address be ascertained.

The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily any offences against the Act, which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine, abetment of any offences and attempt to commit any offences, when such attempt, is an offence. S. 261 Cr. P. C.

The term "food" does not include "drinks" and therefore exposing not wholesome areated waters for sale does not amount to an offence under bye-laws of the Act. 16 M. L. T. 585; 26 I. C. 311. Feeding voters is an offence under S. 10-B. 1 Weir. 726.

The doors of a house are not moveable property and cannot be distrained under the 1st portion of clause 1 of S. 103. 13 M. 518, 1 Weir 730; foll 14 M. 467, comp 11 C. 164

The fact that a civil suit has been brought does not bar a prosecution under S. 103. 1 Weir. 731.

When no order was passed on an application for license till after the expiry of thirty days fixed by S. 188 (5) of the Act, the accused must be deemed to have obtained the license for the next official year. S. 188 (5) should not be read subject to the reference to the refusal of the of the license in S. 189 of the Act. 40 M. 289, 18 Cr. L. J. 831, 41 I. C. 655. Under S. 196 (5) a Municipality has an absolute discretion to refuse to grant license. 28 M. 520. Doubted. 2 L. W. 368; 17 M. L. T. 311; 28 I. C. 709.

Where the chairman of a Municipal Council lawfully authorises a person to exercise his powers, including the power to lodge a complaint, that person is entitled to exercise that power so long as the authorisation lasts, and he does not need express authorisation under S. 280 to institute a complaint in respect of an offence under the Act. 60 I. C. 1003; 22 Cr. L. J. 315. A Municipal Inspector is a public servant within the meaning of S. 41 of the Act. If he is assaulted in the execution of a distress the person assaulting is liable to be punished under S. 353 I. P. C. 13 M. 131; 1 Weir 345.

No person shall be tried for any offence against the provisions of the Act or of any by-law made under S. 255 except upon complaint made by the police or by the Municipal council or by the Chairman or by a person expressly authorized in this behalf by the Municipal Council or the Chairman. But nothing herein contained shall affect the provisions of S. 191 of Cr. P. C., in regard to the power of certain Magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion. S. 280.

A sanitary Inspector expressly authorised by the Chairman to prosecute for deviation from the plan attached to an application for license preferred a complaint not only for such deviation but also for exceeding the time limited by license.

Held, that the Sanitary Inspector was not expressly or impliedly authorised to prefer a complaint about exceeding the time limit and the conviction of the petitioner for that offence was consequently illegal. 11 L. W. 120, 21 Cr. L. J. 327, 55 I. C. 599.

The officer entrusted with the work of distraint under S. 109 is empowered to distress the defaulters property wherever the same may be found within the Municipal limits. No previous notice of the officers' intention to enter the house for the purpose under S. 274 is required. Even if the section was applicable, the defaulters, in offering resistence to the officer is not justified under S. 99 I. P. C. 1 Weir. 752.

A person cannot be prosecuted under S. 103 for default of payment of tax, unless it appears that the tax cannot be recovered by distress and sale of the moveable property of the defaulters. 9 M. 429.

There is no provision in the Act for imprisonment being awarded in default of payment of fine, and the procedure for levying fine is laid down in S. 286. 1 Weir. 753.

A conviction under S. 203 is bad, if the notification prohibiting the sale is not published in the District Gazette, and if such notification does not specify the street or part of the street in which the sale is prohibited. 1 Weir. 746.

An occupier of land within a Municipal area allowing offensive liquid to flow into the street is guilty of an offence under S. 222, though there are no side drains for the street. 18 Cr. L. J. 384; 38 I. C. 768.

An attachment of a cart for want of license just at time when the goods of passengers are placed in it and the passengers are about to get into it is illegal under S. 89 of the Act. A seizure under such circumstances is an offence under S. 166 I. P. C. 13 Cr. L. J. 199; 14 I. C. 199.

A "toll-gate kist" is not a tax under S. 103 but it is money due under a contract under S. 92. Therefore a prose-

cution for such nonpayment will not lie under S. 111 of the Act. 16 Cr. L. J. 702; 30 I. C. 750.

Notice under S. 261 is not necessary for suits for compensation for breach of Contract. A suit to recover compensation for breach of contract to remove rubbish which was interfered with by Municipal servants is not governed by the section. 28 M. L. J. 147; 28 I. C. 45.

A person who manufacture explosives is not exempted from taking out a license for such manufacture because he is a partner with another who holds license for such manufacture. 1 Weir. 756. A license for explosives obtained under the Indian *Explosive* Act IV of 1884 does not exempt the license from the obligation imposed by S. 188(8) of the Act to take out of a license for such explosives kept within the limits of the Municipalities. 1 Weir. 740.

The Indian Explosives Act IV of 1884.

Powers and duties.

Offences under the Act consist of breaches or neglect of the rules made under it by Government to regulate the manufacture, etc., of explosives and are not cognizable; but S. 13 authorizes arrest under certain circumstances as described below. This power a police officer should avoid to exercise without reference to the rules, and in an emergency it is better to make the arrest under Ss. 285 and 286 I. P. C., which provide penalties for dealing with fire, cumbustible substances or explosives so as to endanger human life, etc., and are both cognizable.

Every Police-officer may arrest without warrant a person, who is found committing any act which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored or any railway or port, of any carriage, ship or boat. The person arrested shall be paced before a magistrate as soon as possible (section 13). See page 56(16) vol. 1.

Whenever there the occurs in or about, or in connection with any place in which an explosive is manufactured, possessed or used, or any carriage or vessel, either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police station (section 7). Notice of accident.

1. The rules issued by the Government of India in Department in Commerce and Industry (Explosives) Notification No. 4013—33, dated the 6th June 1914, have been supplied to all officers down to station-house officers. Rules.

2. Rule 33(1) provides that a person holding or acting under a licence shall be bound to produce it, or an authenticated copy of it, when called upon to do so by a police officda of and above the rank of station-house officer.

3. Rule 32(2) gives power to a police officer, of and above the rank of Sub-Inspector, to inspect premises, vehicles or vessels possessed by licence-holders or any premises, vehicle or vessel, in which the police officer has reason to believe that an explosive has been illicity manufactured, possessed or sold within the local area of his jurisdiction.

4. Rule (3) of the conditions of a licence provides that the licence-holder shall exhibits his stock and books of manufacture, and sales to any police officer not below the rank of Inspector.

5. Under rule 31 a licence granted under the Explosives Act may be declared to have the effect of a like licence granted by the the like authority under the Indian Arms Act (XI of 1878).

The omission to give information under S. 88 of the Act is an offence under S. 176. I. P. C.

Where a person is under a legal duty to report certain facts and he conceals them, he must be presumed to intend to conceal them, unless he can show that he has reason to suppose that the authority to which the report was due had the information from other sources, 17 M. L. T. 263; 16 Cr. L. J. 219; 27 I. C. 843.

Under S. 8 the primary requsite to give notice is accidental explosion and not serious injury to property. The word 'occupier' in S. 8 of the Act refers to some one on the spot at the time of the explosion who must necessarily become aware of the explosion. S. 176 I. P. C., will not apply unless the omission to give notice was intentional. 16 Cr. L. J. 622; 30 I. C., 446.

Under the provisions of the S. 13 of the Act, a Police officer may arrest, without warrant,, any person who is found committing any act for which he is punishable under the Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port or any carriage or ship or boat. The person arrested should be removed, as soon as conveniently may be, before a Magistrate.

It is immaterial under what section of the Act an an arrest is made, if in fact the arrest is justifiable, and the officer making the arrest can call to his aid any statute which justifies his action, irrespective of whether or not it was present to his mind, when he made the arrest. 2 I. C. 436, 36 C. 433; 40 C. 898; 18 C. W. N. 185, 23 I. C, 25; 13 C. L. J. 65; 13 I. C. 721.

Patakas or crackers are not fire-works within the meaning of the Act, and so no licence is necessary for the manufacture or sale of them. 5 I. C. 911; 11 Cr. L. J. 287; 8 P. R. 1910 Cr.

'Toy fireworks include clove-crackers or lavangi crackers which are therefore exempted from R 35 requiring licence. 18 B. L. R. 556; 18 Cr. L. J. 132; 37 I. C. 491.

A license for the manufacture of explosive is not at liberty to associate other persons with himself in the manufacture and sale of explosives without such other persons being provided with licenses. 1 Weir. 756.

Under S. 4(b) of the Act, the possession of a bomb is an offence itself, provided the necessary intent is proved, while under S. 399 I P. C., the possession may be one of several means to the end. 15 I. C. 65, 39 C. 119; 13 I. C. 65. In a charge under S. 4(b) of the possession of explosives to be punishable must also be possession with knowledge and assent. Any part of any apparatus, machine, etc., used or adopted for causing any explosive substance is included in the term 'explosive substance as used in S. 4(b). 42 C. 957; 19 C. W. N. 676; 21 C. L. J. 331; 16 Cr. L. J. 497. 29 I. C. 513.

Where explosive articles are found in a house in such a place or places where several persons living in the house may have access, the presumption is that the manager of the family has the control or possession of them. Even that is only a presumption easily rebutted. 15. A 129; 40 C. 898; 23 I. C. 25; 13 Cr. L. J. 65; 13 I. C. 721.

The Indian Telegraph Act XIII of 1885.

Cognizable offences.

The offences against the Act which are cognizable and non-bailable are contained in sections 25, 26, 27, 29 and 32.

Duty of beat constables.

Any damage or accident to telegraph lines or posts shall be reported by station-house officers without delay to the nearest Telegraph office. Constables on whose beats there are telegraph lines should be instructed to report damage which is brought to their notice.

A telegraph officer shall be deemed a public servant within the meaning of Ss. 161, 163, 164, and 165 I. P. C., and in the definition of "legal remuneration" contained in the said S. 161 the word "Government" shall, for the purpose of the Act, be deemed to include a person licensed under the Act.

Who ever despatches a false telegram under a fictitious name with the object of obtaining payment he may be convicted for an offence under S. 29 of the Act, as well as of an attempt to cheat under S. 420 I. P. C., read with S. 511 I. P. C. 1903 A. W. N. 26.

Offences against the telegraphs may be enquired into or tried in a presidency town whether the offences is stated to have been committed within such town or not, provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. S. 184 Cr. P. C.

The Madras Abkari Act of 1886.

Powers and duties.

The following are the powers and duties of the Police under the Act:—

(1) *Of a Sub-Inspector, station-house officer and officer in charge of an out-post*:—(i) Upon having reason to believe that an offence under sections 55, 57 or 58 has been committed and that the delay in obtaing a search warrant would render its execution of no avail, to record the reasons for such belief and enter and search any place, seize, anything liable to confiscation and detain and search and, if he think proper, arrest any person found in such place whom he believes to be guilty of any offence under the Act. Every person arrested shall be admitted to bail, if sufficient bail be tendered for his appearance before a Magistrate or before an Abkari Inspector as the case may be (section 31). Vide page 57 Vol. I.

(ii) To admit to bail, or in default of bail forward in custody to the Abkari Inspector or Magistrate, persons arrested and brought before him (section 40).

Note :—(1) A station house officer is authorized to reject any surety which he may consider insufficient and therefore unsuitable.

(2) As persons residing out of British India cannot be proceeded against for breach of their bonds, security tendered by them should not be accepted.

(3) A separate bail bond book will be kept for Salt and Abkari cases. They will also be recorded in the General Diary.

(iii) To take charge of, and keep in safe custody, pending the orders of a Magistrate or an Abkari Inspector, all articles seized under the Act and delivered to him. Any Abkari officer, who may accompany such articles or is deputed by his superior officer, shall be allowed to seal such articles and to take samples of them. Such samples shall be sealed by the Abkari officer and the station-house officer (section 53).

(2) *Of every police-officer*—(i) To lay information before a Magistrate and obtain a search warrant to search for any article concerning which an offence is suspected to have been committed (section 30).

(ii) To arrest without warrant in any public thoroughfare or open place any person found committing an offence under sections 55, 57 or 58 and in such place seize and doing any article liable to confiscation and search any person, vessel, vehicle or package (section 34).

(iii) To arrest accused persons, or suspected offenders, who refuse to give name and residence or give names or residences suspected to be false (section 35).

(iv) To assist Abkari officers in carrying out the provisions of the Act (section 37).

(v) To give information of offences to his superior or to an officer of the Salt and Abkari department (section 38).

(vi) To require a shop to be kept closed for a time in cases of apprehension or occurrence of a riot or unlawful assembly in its vicinity (section 54).

The portions of the Act in force with reference to ganja, bhang and other intoxicating drugs prepared from the hemp plant are—

Chapters I and II.

Chapters IV, sections 15 and 16.

Chapter V, section 17, omitting clauses (*a*), (*b*), (*c*), (*d*) and (*e*), section 18 except clauses (*b*) and (*f*).

Chapter VI.

Chapter VII, sections 28 and 29, omitting clause (*j*) of the latter except as regards storage.

Chapters VIII and IX omitting clauses (*a*), (*b*), (*c*) and (*g*) of section 55 and section 58.

Chapter X.

Notification in the *Fort St. George Gazette*, dated 18th December 1888, Part I, page 900.

All the provisions of the Madras Abkari Act have been extended throughout the Presidency under notification No. 196, Revenue, dated 12th April 1910, published on page 470 of the *Fort St. George Gazette*. Part I, dated 12th April 1910.

The maximum quantities of coca leaves, alkaloids of coca, every other intoxicating drink or substance prepared from the coca plant (Erythroxylum coca), and all drugs, synthatic or other, having a like physiological effect to that of cocaine, and all preparations and admixtures of any of the above, except such as may be exempted from excise restrictions which may be possessed without a license or transported without a permit are :—

(*a*) In the case of authorized medical practitioners and dentists and veterinary practitioners holding diplomas from recognized institutions, who require the drugs for use in exercise of their profession.—

Half an ounce or such larger quantity as may be fixed by the Commissioner in each case.

(*b*) In the case of other persons:

One-tenth of a grain ordinarily, and in cases where possession is authorized by an authorized medical practitioner's prescription, such quantity as may be allowed by such prescription.

Note:—'Authorized Medical Practitioner' means any registered practitioner as defined in the Madras Medical Registration Act, 1914, and any unregistered person who is possessed of qualifications which render him eligible for registration under the medical Act, 1858, and any Act of Parliament amending the same, or under any law for the registration of medical practitioners for the time being in force in any part of British India and who has been authorized in this behalf by (*a*) the Board of Revenue in Madras town and (*b*) by the Collector, in consultation with the District Medical & Sanitary Officer in the mufassal. [Notification of the Board of Revenue (Separate Revenue), No. 12, dated 9th October 1916.]

These limits apply in the case of persons specified in clause (*a*) above to all varieties of the drug taken together—vide G. O. No. 2463, Revenue, dated 16th August 1912.

The sale of the abovementioned drugs without a licence is illegal under section 15 and punishable under section 55 of the Act.

The Government of India have prohibited the transmission by post of cocaine and its allied drugs subject to the exemption of (*a*) transactions on account of the Government and (*b*) the despatch of recognized medical preparations which have been notified as such. (G. O. No. Press 486, Separate Revenue, dated 10th July 1915).

The procedure to be adopted in giving practical effect to the prohibition is laid down as follows:—

Whenever there is reason to believe that a contraband article has been sent by post, the Postal department will be

asked to take action under section 24 of the Indian Post Office Act (VI of 1898), i. e., the postal article in question will continue on its journey till it reaches the post office of delivery where the officer in charge of the post office will invite the addressee to attend and in his presence, or if he fails to attend in his absence, open and examine the postal article.

The information so obtained should enable the Police Department to obtain the necessary proof for launching a prosecution under the excise law or under the Post Office Act.

The Police should be on the alert to take notice of the prevalence of the cocaine habit as an indication of the existence of illicit traffic in cocaine or novocain. Endeavours should then be made to trace the source of supply. The Police at seaports and on the frontiers of foreign territory should exercise special vigilance to detect the smuggling of cocaine or novocain. Information received on this subject should be communicated to the Deputy Inspector General, Criminal Investigation Department, by the District Superintendent of Police and no action should be taken without the Deputy Inspector-General's approval, unless immediate action is necessary. Inspectors of Police are empowered to communicate directly with the Deputy Inspector-General, Criminal Investigation Department, in emergent cases.

(1) A gallon of toddy and one-sixth of a gallon of country spirits may be possessed or transported without permit, except in certain local areas.

(2) The amount of ganja which may be possessed without licence is five tolas.

The Police should give all possible assistance to officers of the Abkari Department and inform them of offences which come to their notice.

Offences of a technical nature, such as breaches of conditions of licences should, as a rule be reported to the Abkari Department without direct action being taken.

Under S. 3 (21) of the Act, as amended by the Madras Act 1 of 1913, His Excellency the Governor in Council is pleased to declare all Police outposts in the Madras Presidency to be Police stations for the purposes of the Abkari Act. Notification No. 390, Revenue, dated 19th August 1913.

The term 'Abkari' in the Act includes ganja. 34 I. C. 927.

The Act does not narrow the definition of the word "Police" given in the police Act. The word 'police officer' as used in the Act includes an officer of the Village police. 9 M. 97; 1 Weir 630.

The S. 13 does not prohibit a person who has no license from holding an interest in the manufacture or vend of liquor jointly with a licensed manufacturer or vendor. 24 M. 401. An agreement of an unlicensed person with an Abkari license; to sell liquor on latter's premises is illegal. 1912 M. W. N. 414 13 I. C. 148.

The powers conferred by S. 29 (n) include the power to direct that confiscated article may be dertroyed or sold, as also to give directions as to the mode of the sale. Such an order cannot be supported, if it purports to have been made under S. 517 Cr. P. C. 19 M. L. J. 254, 5 M. L. T. 256, 1 I. C. 79; 9 Cr. L. J. 149. The magistrate who adjudges the confissation has power to direct that the confiscated article may be sold or destroyed. 9 Cr. L. J. 149, 19 M. L. J. 254.

Though transfer of an Abkari license is illegal, to accept a partner in the license is not R. 27 is ultra vires of the notification No. 58. 6 M. L. T. 335; 3 I. C. 951.

The words "being holder of a license" (S. 56) must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license. 21 M. 63.

Rule 229 of the Standing Orders of the Board of Revenue which is only a departmental order for the guidance

of its subordinates cannot be pleaded as a defence to the prosecution under S. 6 cl. (b). This rule, not being made under S. 69 of the Act, has not the force of law and does not form part of the Act. An offence is committed under the Act the moment a person sells arrack below the strength specified, whatever may be the cause of variation, the technicality of the offence being a matter for the prosecuting officers only. 2 L. W. 1120; 16 Cr. L. J. 800; 31 I. C. 656.

Where the seals put on a cask containing arrack are not tampered with, and the weakness in the strength of the liquor is such as could be due to exposure owing to natural cause or constant sales, a conviction for the possession of arrack below the normal strength is unsustainable. 16 Cr. L. J. 606; 30 I. C. 158.

Vexatious or unnecessary seizure of property or arrest by an Abkari officer or Police officer, is punishable under S. 59 of the Act.

A sub-inspector of salt and abkari attempted, without a search warrant to enter a house in search of property the illicit possession of which is an offence under the Act and was obstructed. Held even though the salt inspector was not strictly justified in searching a house without a warrant, the person obstructing would not set up the illegality of the officer's proceeding as a justification of their obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. 19 M. 349; 1 Weir 45, 21 M. 296; Ref. in 17 M. L. J. 323. An Assistant Inspector of one circle on receiving some information, went and arrested the accused under S. 34 of the Act in another circle, the Magistrate who tried the case raised the question whether the officer of one circle had been empowered to enter the other circle and detect a case there and he acquitted. Held, the question whether the officer who effected the arrest was acting within or beyond his powers in making the arrest does not affect the question of whether the accused were guilty or not guilty of the offence

with which they were charged. The Magistrate had jurisdiction under S. 190 Cr. P. C., to take the cognizance of the offence. 26 M. 124; 1 Weir 630. Relied on 31 C. 557.

Although Sub inspector of the salt and abkari department may be acting irregularly in making a search without a warrant, a person obstructing cannot claim the right of private defence. 19 M. 349; 1 Weir 45. Foll 21 M. 296.

If two persons having each bought 4 quarts of liquor put them together and carrying them home, each of them is in the contemplation of law in possession of the whole. 17 Cr. L. J. 476; 36 I. C. 156.

An abkari peon does not fall within the definition of police. 1 Weir. 632 and 836. An abkari peon is not an abkari officer within the meaning of S. 62 of the Act. 1 Weir. 651; 4 M. L. T. 107; 18 M. L. J. 450.

Under the Madras Abkari Act, the accused person has the right to a special procedure regulating the course of investigation and from the moment the suspected person is arrested and produced before the Abkri officer, the Abkari Department alone has to conduct the proceedings. The Police have, therefore, no right to file a charge sheet or otherwise to proceed under Chapter XIV Cr. P. C., in respect of an offence under the Abkari Act, and proceedings so instituted by a charge sheet by the Police, are without jurisdiction and liable to be set aside by the High Court in revision. 72 I. C. 175, 24 Cr. L. J. 335.

An omission to keep shop open does not amount to an act in breach of condition of the license; and that therefore he cannot be convicted under S. 56 of the Act. 23 M. 220.

The Towns Nuisances Act III of 1889.

(1) With reference to sub-section (5) of section 3 of this Act the Government consider that the practice of weavers stretching their warps along the sides of streets is sanctioned

Weavers' warps.

by immemorial custom. They do not therefore desire that the Police should interfere with it, except in cases where there is a distinct nuisance or danger to the public, and unless the Municipal authorities or private persons complain.

Inspector General to enrol S. P. C. A. Agents.

(2) The Inspector-General, on the recommendation of the District Magistrate, has power to sanction the enrolment of Agents of the Society for prevention of cruelty to animals as Police officers under Act XXIV of 1859 for the purpose of prosecuting persons, committing acts of cruelty to animals, under section 5 of the Act.

An agent of the Society for the prevention of Cruelty to animals who has been appointed in respect of offences under S. 53 of the Act III of 1888 a member of the Madras City Police force constituted under the Act and who by virtue of such appointment is empowered to arrest offenders under that section is a public servant within the definition in S. 21 (8) I. P. C. 46 M. 90.

For arrest in nuisance cases see pages 55 & 59 of Vol. I.

Placing a cherpoy on the road in the bazaar temporarily does not amount to the offence of causing public nuisance. 17 I. C. 574; 13 Cr. L. J. 830.

The mere spreading of a ragi stalk to dry in the streets of a village is not an offence. 1 Weir. 912 and 913.

The spreading of cloths to dry in a public street is not an offence, neither under clause 2 nor under clause 9 of S. 3 of the Act. 1 Weir. 913.

Where the evidence proved conclusively that, owing to the accused's selling fish on the road side number of people collected there and caused an obstruction, held, this was an offence within the meaning of S. 3 (b). 31 M. 408, 3 M. L. T. 400, 18 M. L. J. 349.

Under S. 3 (10) of the Act a cart stand, is not a place of public resort. 9 Cr. L. J. 114.

A Magistrate convicting a person under S. 3 of the Act has the power to impose a fine to accused, or a sentence of imprisonment in default of the payment of the fine. 18 M. 490; 1 Weir 909.

Skinning animals which die a natural death does not in itself constitute public nuisance. 25 I. C. 352; 15 Cr. L. J. 600.

A conviction for committing a public nuisance will be justified to the accused who caused annoyance and obstruction to the public by gambling on a throughfare. 16 Cr. L. J. 254; 28 I. C. 110.

The Madras Police Act IV of 1889.

The following are the powers and duties of the Police under this Act :— Powers and duties.

1. *Station-house Officers* :—(i) To receive all articles seized by the heads of villages and sent to the Police.

Note. 1. The reports will be forwarded to the Salt Circle Inspector.

2. The fact will be entered in the General Diary.

(ii) To admit persons arrested to bail in the manner specified in section 56 to appear before the Salt Inspector, and, in default of bail, to forward them in custody to such Inspector section 54).

Note. 1. A station house-officer is authorized to reject any surety which he may consider insufficient and therefore unsuitable.

2. As persons residing out of British India cannot be proceeded against for breach of their bonds, security tendered by them should not be accepted.

3. A separate Bail Bond book will be kept for Salt and Abkari cases. They will also be recorded in the General Diary.

(iii) To take charge of, and keep in safe custody, pending the orders of a magistrate or an Inspector of the Salt Department, all articles seized under the Act and delivered to them. Any Salt officer who may accompany such articles or is deputed by his superior officer shall be allowed to seal such articles and to take samples of them. Such samples shall be sealed by the Salt officer and the station-house officer.

2. *Of Police Officers not below the rank of Head Constable and Police Station-house Officers* :—(i) To enter and search, without warrant, any place where contraband salt is manufactured, sold or kept, seize all things liable to confiscation, destroy any works constructed for such manufacture, and arrest all persons concerned in the manufacture, sale or keeping of such contraband salt or in dealing therewith (section 47). Vide page 57 Vol. 1.

Note.—The report under section 53 must be a written report.

3. *Of every Police Officer* :—(i) To apply to a magistrate for search warrant on belief that contraband salt is manufactured, sold, or kept in any place within the jurisdiction of such magistrate (section 46).

(ii) To arrest without warrant in any public thoroughfare or open place any person found committing an offence under the Act and in such place seize and detain any articles liable to confiscation (section 49). Vide page 57. Vol. I.

(iii) To arrest accused persons or suspected offenders who refuse to give names or residence suspected to be false (section 50).

(iv) To render assistance to the Salt, Land Revenue and Customs Departments in carrying out the provisions of the Act (section 68).

(v) To give immediate information to an officer of the Salt Department of all breaches of any of the provisions of the Act (section 69).

Note:—In the case of an arrest by Salt officials a police officer will not be liable under section 76 for acting under section 54, even though he may have reason to believe that the arrest was illegal.

Searches for contraband salt and arrest by officers of the salt department without warrant should be in urgent cases where the delay in obtaining such search warrant will prevent the discovery of such contraband salt; otherwise he has no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of S. 224 I. P. C. 1 Weir. 206, 6 M. L. T. 173. 19 M. 310; Dist. 21 M. 296.

The manufacture of an inferior substitute for salt (such as brine) is not an offence within the provisions of S. 74 of the Act. 1 Weir. 895.

In order to support a conviction under S. 74(d) for possession of contraband salt it is necessary to prove that the accused had knowledge or reason to believe that the salt was contraband. 1 Weir. 897.

An officer of the salt department is not a Police officer within the meaning of S. 125 I. E. A, and may therefore be compelled to say whence he obtained information as to the commission of an offence. Rat. 183.

Criminal Tribes Act, 1924 (VI of 1924).

An Act to consolidate the law relating to Criminal Tribes.

WHEREAS it is expedient to consolidate the law relating to criminal tribes: It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the Criminal Tribes Act, 1924.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "district" includes a Presidency town and the town of Rangoon;

(2) "District Magistrate" means, in the case of a Presidency-town or the town of Rangoon, the Commissioner of Police;

(3) "prescribed" means prescribed by rules made under this Act; and

(4) "Superintendent of Police" means, in the case of Presidency-town or the town of Rangoon, any officer appointed by the Local Government to perform the duties of a Superintendent of Police under this Act.

Notification of Criminal Tribes.

3. If the Local Government has reason to believe that any tribe, gang or class of persons, or any part of a tribe, gang or class, is addicted to the systematic commission of non-bailable offences, it may, by notification in the local official Gazette, declare that such tribe, gang or class or, as the case may be, that such part of the tribe, gang or class is a criminal tribe for the purposes of this Act.

Registration of Members of Criminal Tribes.

4. The Local Government may direct the District Magistrate to make or to cause to be made a register of the members of any criminal tribe, or part of a criminal tribe within his district.

5. Upon receiving such direction, the District Magistrate shall publish notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of the criminal tribe or part, as the case may be,—

(*a*) to appear at a time and place therein specified before a person appointed by him in this behalf;

(*b*) to give to that person such information as may be necessary to enable him to make the register; and

(*c*) to allow their finger-impressions to be recorded:

Provided that the District Magistrate may exempt any member from registration and may cancel any such exemption.

6. The register, when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

7. (1) After the register has been placed in the keeping of the Superintendent of Police, no person's name shall be added to the register, and no registration shall be cancelled, except by, or under an order in writing of, the District Magistrate.

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned—

(*a*) to appear before him or an authority appointed by him in this behalf at a time and place therein specified;

(*b*) to give to him or such authority such information as may be necessary to enable the entry to be made; and

(*c*) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrived by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein or erase it therefrom, as he may think fit.

9. The District Magistrate or any officer empowered by him in this behalf may at any time order the finger-impressions of any registered member of a criminal tribe to be taken.

10. The Local Government may, by notification in the local official Gazette, issue in respect of any criminal tribe either or both of the following directions, namely, that every registered member thereof shall, in the prescribed manner,

(*a*) report himself at fixed intervals;

(*b*) notify his place of residence and any change or intended change of residence, and any absence or intended absence, from his residence.

Restriction of Movements of Criminal Tribes.

11.(1) If the Local Government considers that it is expedient that any criminal tribe, or any part or member of a criminal tribe, should be:—

(*a*) restricted in its or his movements to any specified area, or

(*b*) settled in any place of residence, the Local Government may, by notification in the local official Gazette declare that such criminal tribe, part or member, as the case may be, shall be restricted in its or his movements to the area specified in the notification, or shall be settled in the place of residence so specified as the case may be.

(2) Before making any such declaration, the Local Government shall consider the following matters namely:—

(*i*) the nature and the circumstances of the offences in which the members of the criminal tribe or part or the individual member, as the case may be, are or is believed to have been concerned;

(*ii*) whether the criminal tribe, part or member follows any lawful occupation, and whether such occupation is a real occupation or merely a pretence for the purpose of facilitating the commision of crimes;

(*iii*) the suitability of the restriction area, or of the place of residence, as the case may be, which it is proposed to specify in the notification ; and

(*iv*) the manner in which it is proposed that the persons to be restricted or settled shall earn their living within the restriction area or in the place of residence, and the adequacy of the arrangements which are proposed therefor.

12. The Local Government may by a like notification vary the terms of any notification issued by it under section 11 for the purpose of specifying another restriction area or another place of residence, as the case may be, and any officer empowered in this behalf by the Local Government may, by order in writing, vary any notification made under section 11 or under this section for the purpose of specifying another restriction area, or as the case may be, another place of residence, in the same district.

13. Any notification made by the Local Government under section 11 or section 12 may specify, as the restriction area or as the place of residence, an area or place situated n any other province, provided that the consent of the Local Government of that province shall first have been obtained.

14. Every registered member of a criminal tribe, whose movements have been restricted or who has been settled in a place of residence in pursuance of any notification under section 11 or section 12, shall attend at such place and at such time and before such person as may be prescribed in this behalf.

15. (1) Where, in pursuance of any such notification, any member of a criminal tribe is restricted in his movements to an area, or is settled in a place of residence, situated in a province other than that by the Local Government of which the notification under section 3 relating to the criminal tribe was issued, all the provisions of this Act and the rules made thereunder shall apply to him as if the notification under section 3 had been issued by the Local Government of such other province.

(2) If any criminal tribe, or any part of a criminal tribe which has been registered under section 4 in any district, or any member of such tribe or part, is restricted in its or his movements to an area, or is settled in a place of residence, situated in another district (whether in the same province or not), the register or, as the case may be, the relevant entries or entry therein shall be transferred to the Superintendent of Police of the last-mentioned district, and all the provisions of this Act and the rules made thereunder shall apply as if the criminal tribe or part had been registered in that district, and the District Magistrate of that district shall have power to cancel any exemption granted under section 5.

Settlements and Schools.

16. The Local Government may establish industrial, agricultural or reformatory settlements and may order to be placed in any such settlement any criminal tribe, or any part or member of a criminal tribe, in respect of which or of whom a notification has been issued under section 11.

Provided that no such order shall be made unless the necessity for making it has been established to the satisfaction of the Local Government, after an inquiry held by such authority and in such manner as may be prescribed.

17. (1) The Local Government may establish industrial, agricultural or reformatory schools for children, and may order to be separated and removed from their parents or guardians and to be placed in any such school or schools the children of members of any criminal tribe or part of a criminal tribe, in respect of which a notification has been issued under section 11.

(2) For every school established under sub-section(1), a Superintendent shall be appointed by the Local Government.

(3) The provisions of sections 18 to 22 of the Reformatory Schools Act, 1897 shall, so far as may be, apply in the case of every school for children established under this

section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of eighteen and above the age of six years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

18. The Local Government or any officer authorized by it in this behalf may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the province :—

(*a*) to be discharged, or

(*b*) to be transferred to some other settlement or school in the province.

19. Any order made under section 16, section 17 or section 18 may specify as the settlement or school in which any person is to be placed or to which he is to be transferred, as the case may be, any industrial, agricultural or reformatory settlement or school in any other province, provided that the consent of the Local Government of that province shall first have been obtained.

Rules.

20.(1) The Local Government may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate :—

(*a*) the form and contents of the register referred to in section 4 ;

(*b*) the manner in which the notice referred to in section 5 shall be published and the means by which the persons

whom it concerns, and the village-headmen, village-watchmen and land-owners and occupiers of the village in which such persons reside, and the agents of such land owners or occupiers shall be informed of its publication;

(*c*) the addition of names to the register and the erasure of names therein, and the mode in which the notice referred to in sub-section (2) of section 7 shall be given;

(*d*) the manner in which persons mentioned in section 10 shall report themselves, or notify their residence or change or intended change of residence, or any absence or intended absence;

(*e*) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 11 or section 12;

(*f*) the circumstances in which members of a criminal tribe shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;

(*g*) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined, or the area to which their movements are restricted;

(*h*) the conditions to be inserted in any such pass in regard to:—

(*i*) the places where the holder of the pass may go or reside;

(*ii*) the persons before whom, from time to time, he shall be bound to present himself; and

(*iii*) the time during which he may absent himself;

(*i*) the place and time at which, and the persons before whom, members of a criminal tribe shall attend in accordance with the provisions of section 14;

(*j*) the authority by whom and the manner in which the inquiry referred to in section 16 shall be held;

(*k*) the inspection of the residences and villages of any criminal tribe;

(*l*) the terms upon which registered members of Criminal tribes may be discharged from the operation of this Act;

(*m*) the management, control and supervision of industrial, agricultural or reformatory settlements and schools;

(*n*) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour; and

(*o*) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure.

21. Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him:—

(*a*) fails to appear in compliance with a notice issued under section 5 or section 7, or

(*b*) intentionally omits to furnish any information required under either of those sections, or

(*c*) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

(*d*) refuses to allow his finger-impression to be taken by any person acting under an order passed under section 9, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both.

22. (1) Whoever, being a registered member of a criminal tribe, contravenes a rule made under clause (*e*), clause (*g*) or clause (*h*) of section 20 shall be punishable with imprisonment for a term which may extend,—

(*a*) on a first conviction, to one year,

(*b*) on a second conviction, to two years, and

(*c*) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, being a registered member of a criminal tribe, contravenes any other rule made under section 20 shall be punishable,—

(*a*) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; and

(*b*) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(3) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code of Criminal Procedure, 1898, may be arrested without a warrant by any officer in charge of a police-station or by any police-officer not below the rank of a sub-inspector.

23. (1) Whoever, being a member of any criminal tribe and having been convicted of any of the offences under the Indian Penal Code specified in Schedule I, is convicted of the same or of any other such offence shall, in the absence of special reasons to the contrary which shall be stated in the judgment of the Court, be punished,—

(*a*) On a second conviction, with imprisonment for a term of not less than seven years, and

(*b*) On a third or any subsequent conviction, with transportation for life.

Provided that not more than one of any such convictions which may have occurred before the 1st day of March, 1911, shall be taken into account for the purposes of this sub-section.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

24. Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court,—

(*a*) that he was about to commit, or aid in the commission of, theft or robbery, or

(*b*) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

25. (1) Whoever, being a registered member of criminal tribe,—

(*a*) is found in any part of British India, beyond the area or place of residence, if any, to which his movements have been restricted or in which he has been settled without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or

(*b*) escapes from an industrial, agricultural or reformatory settlement or school,

may be arrested without warrant by any police-officer, village-head man or village-watchman, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or place or to such settlement or school, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act.

Provided that an order from Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

26. (1) Every village-headman and village watchman in a village in which any members of a criminal tribe reside, and every owner or occupier of land on which any such persons reside, and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of—

(*a*) the failure of any such person to appear and give information when required to do so by a notice issued under section 5; or

(*b*) the departure of any registered member of a criminal tribe from such village or from such land, as the case may be.

(2) Every village headman and village watchman in a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any persons who may reasonably be suspected of being members of any criminal tribe.

27. Any village-headman, village-watchman, owner or occupier of land, and the agent of any such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

28. The Local Government, if it is satisfied that adequate provision has been made by the law of any State in India for the restriction of the movements or the settlement in a place of residence of persons such as are referred to in section 3, and for securing the welfare of persons so restricted or settled, may, with the consent of the Prince or Chief of that

State, direct the removal to that State of any criminal tribe or part of a criminal tribe, for the time being in the province, and may authorise the taking of all measures necessary to effect such removal.

Provided that no person shall be so removed if the Local Government is satisfied that he is a subject of His Majesty.

Supplemental.

29. No Court shall question the validity of any notification issued under section 3, section 11 or section 12, on the ground that the provisions hereinbefore contained or any of them have not been complied with, or shall entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that it has been issued in accordance with law.

Member of a tribe notified under S. 3, is liable to enhanced sentence after notification, provided he has had previous conviction. 17 Cr. L. J. 463, 36 I. C. 143. It is enough for the purpose of the section, if the convict has been previously convicted, whether before or after his registration as criminal. 20 Cr. L. J. 772, 53 I. C. 612. S. 23 of the Act applies to a case of previously convicted accused whose tribe at the time of second conviction was declared as criminal tribe. 17 Cr. L. J. 392, 35 I. C. 824. The words "second conviction" in S. 23 (i) imply a first conviction for a scheduled offence after the coming into force of the Act following upon one or many convictions of scheduled offences prior to the Act and a "third conviction" in clause (b) implies a second conviction as above mentioned. 40 M. 923, 17 Cr. L. J. 149, 33 I. C. 629. The second conviction as under S. 23 (1)-(a), need not be second conviction under the Act, nor should it be second in fact. Taking all convictions prior to the Act as one, the first after the Act is the second and the second after the Act is the second and the second after the Act is the third. 45 B. 1082,

23 B. L. R. 347, 22 Cr. L. J. 317, 60 I. C. 1005. If a member of a criminal tribe notified under S. 10 of the Act, fails to report himself and to give information of his residence, or intended change of residence, he is liable to conviction under S. 22-(2) of the Act. If he has been previously convicted he is liable to conviction under S. 22 (2)-(b). 21 Cr. L. J. 434, 56 I. C. 226. Under S. 26 (2) every occupier of land must communicate the arrival on his land of any member of a criminal tribe to the nearest Police station but a reasonable time must be allowed for the giving of such information. 18 Cr. L. J. 616, 39 I. C. 984. Accused was convicted under the Cr. Tribes Act without framing any charge and without being given an opportunity for cross-examining the prosecution witnesses and without any evidence that he was a registered member of Cr. Tribe. Held, that the accused was prejudiced and his trial was bad in law. But a charge can be framed against an accused prosecuted under the Act on his mere statement before a Magistrate if it shows that he has no real defence and he can be convicted under S. 22 if not under S. 24. 17 Cr. L. J. 70, 32 I. C. 662. The District Magistrate, in granting or refusing an application to take the name of a person out of the register kept under S. 5, acts in administrative capacity and the High Court therefore is not entitled to interfere with any order made by the Magistrate in this respect. 24. W. N. 624, 57 I. C. 101.

SCHEDULE I.

Sections.

231. Counterfeiting coin.

232. Counterfeiting Queen's coin.

233. Making or selling instrument for counterfeiting coin.

234. Making or selling instrument for counterfeiting Queen's coin.

235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.

239. Delivery of coin, possessed with the knowledge that it is counterfeit.

240. Delivery of Queen's coin possessed with the knowledge that it is counterfeit.

242. Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

299. Culpable homicide.

307. Attempt to murder.

308. Attempt to commit culpable homicide.

310. Being a thug.

322. Voluntarily causing grievous hurt.

324. Voluntarily causing hurt by dangerous weapons or means.

326. Voluntarily causing grievous hurt by dangerous weapons or means.

327. Voluntarily causing hurt to extort property or to constrain to an illegal act.

328. Causing hurt by means of poison, etc., with intent to commit an offence.

329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

332. Voluntarily causing hurt to deter public servant from his duty.

333. Voluntarily causing grievous hurt to deter public servant from his duty.

369. Kidnapping child under ten years with intent to steal from its person.

382. Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft.

383. Extortion.

385. Putting person in fear of injury in order to commit extortion.

386. Extortion by putting a person in fear of death or grievous hurt.

387. Putting person in fear of death or of grievous hurt in order to commit extortion.

390. Robbery.

391. Dacoity.

393. Attempt to commit robbery.

394. Voluntarily causing hurt in committing robbery.

397. Robbery or dacoity, with attempt to cause death or grievous hurt.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Making preparation to commit dacoity.

402. Assembling for purpose of committing dacoity.

457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

458. Lurking house-trespass or house breaking by night after preparation for hurt, assault or wrongful restraint.

459. Grievous hurt caused whilst committing, lurking house-trespass or house-breaking.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

THE CANTONMENTS ACTS XV OF 1910.

1. (*a*) A "soldier" means a person who is a soldier of the regular army, but is not an officer. Definition of "soldier."

(*b*) An "officer" means a commissioned or warrant officer doing military duty with the regular forces. It does not include a non-commissioned officer (*e.g.*, a sergeant or corporal). Officer defined.

(*c*) "Spirituous liquor" means any fermented liquor, any wine, any alocholic liquid obtained by distillation, and the sap of any kind of palm-tree and any other liquid containing alcohol declared to be a spirituous liquor for the purposes of the Act. Spirituous liquor.

(*d*) "Intoxicating drug" means opium, *ganja bhang*, *charas* and every preparation and admixture of them and includes any other intoxicating substance or liquid declared to be such for the purposes of the Act. "Intoxicating drug"

(*e*) "Cantonment authority" means a cantonment committee, or where none has been constituted, the Commanding Officer of the cantonment. "Cantonment authority.

(*f*) A "cantonment" is any area declared to be such by the Local Government.

2. The following are offences against the Act.— Offences in respect of liquors and drug.

(*a*) Within a cantonment or such limits round it, as may be prescribed by the Local Government, for any person not subject to military law or subject to it otherwise than as an officer or soldier, knowingly to barter, sell, or supply or to offer or to attempt to offer any spirituous liquor or intoxicating drug to or for the use of—

(*i*) any soldier;

(*ii*) any follower or soldier's wife

without the written permission of the commanding officer of the cantonment or of some person authorized by him to grant permission (section 11);

(*b*) Within the same limits for—

(*i*) any person subject to military law otherwise than as an officer or soldier; or

(*ii*) the wife or servant of any such person or soldier,

to have in his or her possession, except on behalf of Government or for the private use of an officer, more than one quart of any spirituous liquor, other than fermented malt liquor, without written permission as in (*a*) (section 12).

N. B:—This paragraph does not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist, or druggist (section 14).

Arrest and seizure in such cases.

3. (*a*) Any Police officer may without a warrant arrest any person whom he finds committing an offence detailed in paragraph 2 and may seize and detain any spirituous or intoxicating drug in respect of which such an offence has been committed and any vessels or coverings.

(*b*) Where a person accused of an offence under paragraph 2 (*a*), (section 14), has been previously convicted of an offence under it, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed, if any, under paragraph 2 (*a*) which at the time of the alleged commission of the subsequent offence belonged to or was in possession of the person.

Powers of station house officer in respect to prostitutes.

4. Any Police officer not below the rank of officer in charge of a police-station who is employed in a cantonment, and is specially authorized by the Commanding Officer in this behalf, may lodge a complaint against any person who, in any street or public place in the cantonment, loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality (section 209, Cantonment Code).

Cognizable offences.

5. Any Police officer employed in a cantonment may arrest without warrant any person committing in his view any of the following offences (for restrictions, *see* paragraph (6) :—

(*i*) (*a*) to be drunk and disorderly, or drunk and incapable of taking care of one's self in any street or public place;

(*b*) While suffering from an infectious disease, to make or offer for sale any food, drink, medicine or drug, or to wash or carry or help to wash or carry soiled clothes;

(*c*) To break a by-law for the prevention of cutting shrubs or trees or making excavations in hill cantonment.

(*ii*) (*a*) in any street or public place :—

(1) to use threatening or insulting words or to behave in a like manner with a view to provoke or so as to be likely to provoke a breach of the peace;

(2) to ease one's self or wilfully and indecently expose one's person;

(3) to beg importunately for alms;

(4) to expose an infirmity, disease, or sore wound to excite charity;

(5) to be found gaming;

(6) to destroy or deface a public notice put up under the code; or

(7) to break down or damage a direction post, lamp post, etc.

(*b*) to keep, permit to be kept, or assist in keeping a common gaming house;

(*c*) wilfully to intrude on a bathing place and incommode the users;

(*d*) to play music, etc., at any prohibited time or place;

(*e*) to set a dog or other animal to attack, worry or put in fear any person;

(*f*) to destroy, deface, etc., the name of a street or house number;

(*g*) to drive or ride rashly at a time or in a manner prohibited;

(*h*) to drive, lead or keep standing any vehicle after nightfall or before dawn without a suitable lamp, unless there is enough moonlight to render it unnecessary;

(*i*) to leave a vehicle or animal in a street without proper control;

(*j*) to obstruct a street by a vehicle or by exposing articles for sale, etc.,

(*k*) to pollute water declared by the cantonment authority to be a source of public water-supply, by bathing, by washing animals or things, by throwing or allowing offensive matter or rubbish to flow in, or in any other way;

(*l*) to impair the quality or quantity of such water or the usefulness of any pipes or fittings of water-works;

(*m*) to trespass on water-works;

(*n*) to throw a corpse into a source of public water-supply;

(*o*) to bathe or wash any animal or thing at a public well or spring so as to pollute the water;

(*p*) to feed milch animals, or animals for human consumption, on filth;

(*q*) to remain in or re-enter a cantonment after notice of expulsion;

(*r*) to introduce spirituous liquor or an intoxicating drug into a hospital or dispensary;

(*s*) to loiter or beg for alms in any street or public place;

(*t*) to ill-use, torture, or cruelly to beat any animal;

(*a*) without permission to let off fire-works or light a bonfire; or

(*c*) to loiter in any street or public place for the purpose of prostitution or to importune any person. Arrest in this case may only be made at the request of the person importuned, by an officer, a member of a British police force authorized by the officer commanding, or a station officer empowered as in paragraph 5, in whose presence the offence was committed).

Restrictions on power to arrest.

6. (1) No person may be arrested for an offence under paragraph 5 (*ii*), (Schedule III B of the Code) whose name and address are known to either the complainant or the arresting officer.

(2) No person may be arrested who consents to give his name and address unless there is reasonable ground for doubting these, the burden of proof of which lies on the arresting officer.

(3) No person so arrested shall be detained—(*a*) after his name and address have been ascertained, or (*b*) longer than may be necessary for bringing him before a Magistrate.

THE OFFICIAL SECRETS ACT X OF 1889.

Scope.

1. The Act extends to all British India and applies to all subjects of His Majesty in Native States and to all Native Indian subjects without and beyond India.

Definitions.

2. (*a*) "Model" includes design, pattern and specimen.

(*b*) "Sketch" includes any photograph or other mode of representation of any place or thing.

(*c*) "Office under His Majesty" includes any office or employment in or under any department of the Government.

Cognizable offences.

3. (*a*) Any of the offences detailed in paragraphs 4 and 5 are cognizable, if committed in relation to any fortress, arsenal, factory, dockyard, camp or ship belonging to His Majesty or in relation to the naval or military affairs of His Majesty, but not otherwise.

Bail.

(*b*) No one accused of such an offence may be released on bail except by the order of a Magistrate of the 1st class.

Obtaining and disclosing information.

4. If a person—

(*a*) for the purpose of wrongfully obtaining information—

(*i*) enters any part of a fortress, arsenal, factory, dockyard, camp or ship or other like place belonging to His Majesty, where he is not entitled to be;

(*ii*) when however there, or in any office belonging to His Majesty, he obtains or attempts to obtain any document sketch, plan or knowledge of any naval or military or civil affair of His Majesty which he is not entitled to obtain or any copy of such document, etc., or takes or attempts to take without authority a sketch or plan; or

(*iii*) when outside any fortress, etc., takes or attempts similarly to take a sketch or plan of it; or

(*b*) Knowingly having possession of any such document, etc., obtained or taken so as to offend against the Act wilfully communicates or attempts to communicate it to any person to whom in the public interest it ought not to be communicated at that time; or

(*c*) Having been entrusted in confidence by some officer under His Majesty, with any document, etc., relating to such a place or affairs, wilfully communicates the same, when in the public interest it ought not to be communicated; or

(*d*) Having possession of such a document, etc., or information relating to any such fortress, etc., however obtained or taken, wilfully communicates the same to any person as in (*b*).

He is, liable to imprisonment up to one year, and if he intended to communicate it to a Foreign State or does communicate it to an agent of a Foreign State, he is liable to transportation for life.

N. B:—If a person does any of the acts specified in (*a*)(*i*), (*ii*) and (*iii*) without lawful authority, the Court may presume that he did so for the purpose of obtaining wrongful information.

Breach of official trust.

5. If a person, by means of his holding or having held an office under His Majesty has anyhow either obtained possession of or control over any document, sketch, plan or model or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate it to any person to whom it ought not in the the public interest to be communicated at that time, he is guilty of breach of official trust.

N. B:—This paragraph applies equally to a person holding a contract with a Department of Government or any holder of office under His Majesty as such, where the contract involves an obligation of secrecy, and to any person employed by such a contract-holder under like obligation.

Procedure after arrest.

6. (1) A Police officer who has arrested any person under this Act, or into whose charge a public servant has given any person whom he has arrested, must take or send him before the officer for the time being in command of the fortress, arsenal, etc., or of the nearest military station or before a Magistrate of the first class.

(2) When the accused has been taken before the officer commanding, the latter may discharge him, but if he does not, he must without unnecessary delay take or send him to the nearest police-station or any Magistrate of the first class.

(3) When any accused has been sent to a police-station or Magistrate under clause (2) above, the provisions of the Criminal Procedure Code, 1898, apply as though he had been taken there without being taken or sent before the military officer.

The disclosure of Government examination papers is an offence punishable under S. 4. Examination papers are official documents and information. The Act is not limited in its scope to the disclosure of Naval and Military secrets only. 7 Burma 333, 1 L. B. R. 133.

Cognizable offences

THE INDIAN RAILWAY ACT IX OF 1890.

The following are cognizable and non-bailable offences with which Police might have to deal. In each case the accused must be taken before a Magistrate having jurisdiction with the least possible delay.

(a) For a male person, knowing a carriage, compartment or any place to be reserved for females only, to enter it without lawful excuse, or having entered it, to remain there after being requested by a railway servant to leave; (b) in a railway carriage or upon any part of a railway (i) to be in a state of intoxication; or (ii) to commit a nuisance or act of indecency or to use obscene and abusive language; or (iii) to interfere with the comfort of any passenger or extinguished any lamp; (c) for a railway servant to be in a state of intoxication on duty (S. 100); (d) a railway servant when on duty to endanger the safety of any person (i) by disobeying any general rule made under the Act; (ii) by disobeying any rule or order not inconsistent with any such rule as is mentioned in (i), which he is bound to obey and of which he has notice; or (iii) by any rash or negligent act or ommission (S. 101); (e) wilfully to obstruct or impede a railway servant in discharge of his duties (S. 121); (f) unlawfully (i) to put or throw upon or across any railway anything; (ii) to take up remove, loosen or displace any rail, sleeper or anything belonging to a railway; (iii) to turn, move, unlock, or divert any points or other machinery belonging to a railway: (iv) to make, show, hide or remove any signal or light upon or near any railway; or (v) to do, or cause to be done or attempt to do any other act or thing in relation to any railway with intent or knowing one is likely to endanger the saftety of any person travelling or being upon the railway

(S. 126, non-bailable); (g) unlawfully to throw or cause to fall or strike at, against, into or upon, any rolling-stock forming part of a train, anything with the intent or with the knowledge that one is likely to endanger the safety of any person being in or upon such rolling-stock or the train of which it forms part (S. 127 non bailable); (h) by an unlawful act or by any wilful omission or neglect; (i) to endanger or cause to be endangered the safety of any person on the railway; or (ii) to obstruct, to cause to be obstructed or to attempt to obstruct any rolling-stock upon any railway (S. 128); (i) rashly or negligently to do any act or to omit to do any act which one is bound to do, when the act or omission is likely to endanger the safety of any person travelliug on the railway (S. 129).

N. B.—(i) Arrest shall not ordinarily be made in cases falling under (d) i. e., section 101, unless as a result of the offences (1) there has been loss of life or serious injury to persons or a person is caught in the commission of a grave offence; and (ii) the accused is likely to abscond or to continue to endanger the public, (2) a minor under these clauses, may be arrested without warrant for doing so (S. 130 (1).

Drivers of vehicle refusing to obey order.

If a driver, conductor of any tram car or vehicle while on the premises of a railway disobeys the reasonable directions of any railway servant or Police officer, he may be arrested without warrant if (a) there is reason to believe he will abscond, (b) his name and address are unknown, (c) he refuses to give them, or (d) when given, there is reason to believe them incorrect. But he must be released on giving bail, or if his true name and address are ascertained, on his executing a bond without sureties. If he cannot give bail or his true name and address are not ascertained, he must be taken with the least possible delay before the nearest Magistrate having jurisdiction.

Accidents.

In the case of a serious accident, i. e., an accident attended, or of a description usually attended with loss of

human life or with serious injury to human life or property, the railway Police have to make an investigation into the causes which led to the accident. But as the railway Police are not always at hand, it is the duty of the district Police to proceed to the spot forthwith and take such measures as may be necessary, such as making a preliminary enquiry, seeing that no persons abscond, attending to the injured and protecting passengers property and goods. In such cases the officer in charge of the Police station must always go himself. In any case, the railway Police should give immediate information to the district Police, and the latter, if so required, must afford all necessary assistance, and if occasion arises, carry the investigation beyond railway limits.

Railway offences have to be tried either by a Presidency Magistrate or a Magistrate whose powers are not less than that of a Magistrate of the 2nd Class, and to be tried in a Presidency town whether the offence is stated to have been committed within such town or not, provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. S. 184 Cr. P. C. S. 562 Cr. P. C., does not apply to the Act. It only applies where a person is convicted of one of certain offences punishable under the I. P. C. A Magistrate proceeded in the first instance as if the case fell under the first part of S. 100 of the Act and adopted the procedure for summons cases. Eventually the accused was convicted of an offence under the latter part of the section, which contemplates a procedure for warrant case. Held that the action of Magistrate was illegal. 5 M. L. T. 204; 11 Cr. L. J. 191; 4 I. C. 1115. A Magistrate's proceedings under S. 113 of the Act are open to revision by the High Court under S. 435 and 439 Cr. P. C. 1891 P. R. Cr. J. 13. S. 121 of the Act is triable summarily. 1902 A. W. N. 24.

An order forbidding persons to enter railway quarters except for purposes of travelling, is an illegal order as the

public has a right to go to railway premises for many purposes other than travelling. 35 A. 136, 11 A. L. J. 92, 14 Cr. L. J. 122, 18 I. C. 682.

When an accused by one act endangered the lives of the public and committed an offence under S. 101 of the Act and 353 I. P. C., he can be punished under the Act only and not under two enactments. 18 Cr. L. J. 321; 38 I. C. 433.

Where an arrest is made under S. 131 of the Act, the case should be sent to the Magistrate in accordance with the provision of S. 170 Cr. P. C., or a cognizable case within the definition of S. 4 cl. (f) of Cr. P. C., although the offence alleged against the accused be not itself cognizable.

For arrest of persons who are in the service see page 64 Vol. 1. The provisions of chapter XXXIX (bail) and XLII (bonds) also apply to bail given and bonds executed under S. 132 (4) of the Act.

The Traffic—Superintendent is not the Manager's agent, and notice to him is not notice to the Railway administration within S. 77 of the Act, it is not necessary for the defendant to plead want of notice of action in order to avail himself of it, but he may raise the objection at the hearing. 24 C. 306. Foll. 28 A. 552; 22 M. 137.

The desire of a person to see his friend off does not constitute business especially when his friend does not require any assistance from him. 9 I. C. 1011; 36 P. R. 1911. The Railway Company has the right to exclude from Railway premises all persons excepting those having business with them and impose on the rest of the public any terms they think proper. 36 P. R. 1911; 116 P. L. R. 1911; 102 P. W. R. 1911; 9 I. C. 1011. Traffic does not include person going to a Railway station to see a friend off. 9 I. C. 1011; 36 P. R. 1911. Staff quarters for residence are not part of Railway within S. 3 (4). 1914 M. W. N. 124; 15 Cr. L. J. 225; 23 I. C. 177. A ticket-holder is a passenger even before he has actually boarded the train. 12 Cr. L. J. 451; 7 I. C. 355. A ticket not availed

on the day of issue is not a proper ticket within the meaning of S. 68 of the Act. 1 Weir 870. Travelling in a train without a proper pass or ticket is not an offence under S. 113 (cl4) of the Act. 20 A. 95; 17 A. W. N. 196; 44 C. 279; 18 Cr. L. J. 647; 40 I. C. 295. Where excess charge and fare are recoverable under S. 113 of the Act, a Magistrate is not authorized to award imprisonment in default of payment of fine. 1 B. L. R. 166; 18 B. 440; 20 M. 385 (fol). Where the accused travelled in company with his son, aged six years, from one station to another station on a Railway line without paying the half fare due to his son, held that, even though the accused was not guilty as the principal offender, he was clearly liable as an abettor to be punished under S. 32. 1 Weir, 869 (F. B.). Where a person is charged under S. 112 of the Act for having travelled with a ticket issused the previous day, until there is evidence from which it could be clearly inferred that he knew that the ticket had been used before, it is very difficult to say that there is anything from which an intention to cheat the Railway company could be inferred. Even supposing that a breach of the rules was committed and the man knew that he ought not to have travelled on the second day, it is very difficult to say that he intended to cheat the Railway company as long as he held a ticket which represented the fare paid. 17 Cr. L. J. 361; 35 I. C. 665.

To justify a conviction under S. 112 (a) of the Act, the prosecution must prove entry into a carriage in contravention of S. 68, that is, without a ticket and fraudulent intent in so doing, the mere fact that a man having a tickent travels beyond the station named on it does not necessarily warrant an inference that he entered the carriage with a fraudulent intent. 1 Weir. 870.

Under S. 113 of the Act that on failure to pay on demand excess charge and fare when due, the amount shall on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment on

default. The excess charge referred to in S. 113 of the Act is not a fine, though it may be recovered as such. 20 A. 95; 18 B. 440; 20 M. 385; 1 Weir. 871.

The word 'unlawfully as used in S. 122 means without the leave of the railway administration and a person entering the railway line without such leave is guilty under S. 122. S. 47 or the bye-laws made under Cl. (g) thereof have no reference to this offence of trespass. 15 Cr. L. J. 468; 24 I C. 348.

S. 109 of the Act confers a general power on the Railway company to reserve a compartment to passengers of a particular class, community or race and there is nothing illegal in such a provision. The removal of a person by a threat to use force, is a forcible removal. The Railway authorities are not entitled to remove a passenger from a compartment which is reserved for another passenger or class of passengers. 5 S. L. R. 140 ; 13 I. C. 237. Contra 21 I. C. 499.

If a person objects to the coming in of more passengers and stands against the door he commits an offence falling under Ss. 109 (2) and 120 (c) of the Act and is liable to removal not only from the carriage, but also from the Railway by any railway servant, who is therefore not guilty of assault under S. 352 I. P. C., or any other offence, if in doing so he does not use more force or violence than is actually necessary for the purpose. 51 P. W. R. 1910; 11 Cr. L. J. 451; 7 I. C. 355. A person charged with having placed a stone on the rails under S. 126 of the act cannot be allowed to plead that no train was due at the time. 19 B. 716. The owner of cattle which have been allowed to stray upon a Railway in consequence of the neligence of the person actually in charge of them on the owner's behalf is not liable to punishment under S. 125 (1) of the Act. 34 A. 91. 12 Cr. L. J. 614; 12 I. C. 990.

'Traffic' in S. 42 includes passenger traffic in reserving a compartment for Europeans and Anglo Indians, the Company

gives undue preference(to one class of passengers and contravenes S. 42 (2). But the civil Court cannot try the question of legality of the reservation, the proper remedy in the case being to prefer a complaint to the Governor-General in Council under S. 28. 45 B. 1324; 23 B. L. R. 809; 63 I. C. 1004.

A Station Master is not competent to deliver goods unless the Railway receipt is produced. But demurhage cannot be charged for the period taken in enquiry as to the identity of the person entitled to delivery. 2 Pat. L. T. 523; 63 I. C. 256.

A person who persists in selling fish in the delivery shed of a Railway, which is not meant to be a market, and obstructs the business for which the shed is prepared is guilty of nuisance within S. 120 (b). 25 C. W. N. 603; 33 C. L. J. 293; 22 Cr. L. J. 604; 62 I. C. 876.

The Reformatory Schools Act VIII of 1897:

Powers and duties.

Under S. 29 of this Act any Police officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under the Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

The Act lays down for detaining a youthful offender in reformatory school. 1st, the youthful offender must be a boy under the age of 15 years at the date of his conviction. 2ndly, the period of detention in the school should not be less than three years and lastly that the period must not exceed seven years.

For the definition of a juvenile see "juvenile offenders" vol I.

Proceedings under S. 8 of the Act are judicial proceedings. 14 B. 381. App. 25 C. 333; Foll. Rat. Un. Cr. 726. In order that a Magistrate should have jurisdiction under the Act it is necessary that the offender should be under 15 years of age at the time of conviction. 1 Weir, 879.

Under S. 8, a Magistrate should first pass a sentence of imprisonment, and then direct that, instead of undergoing the sentence, the offender should be sent to a reformatory school for such period as the Act and rules framed thereunder direct. 1 Weir. 879; 5 C. W. N. 210.

Ordinarily a boy of thirteen years to be detained in a refermatory for 5 years or until he attains the age of eighteen years is bad. The period of detention should be a definite period. 15 B. L. R. 306; 14 Cr. L. J. 256; 19 I. C. 512.

A boy under 12 years was convicted for stabbing a companion with a knife and was sentenced to pay a fine or in default to go to the reformatory school for three years. The order is illegal. Under S. 8 before such an order is passed the offender must have been sentenced to imprisonment or transportation and not to mere fine. 12 Cr. L. J. 244; 10 I. C. 773.

When a youthful offender during his period of detention in a Reformatory school is again convicted by a criminal court, the sentence of such court shall commence at once, notwithstanding anything to the contrary in S. 397 Cr. P. C., but the court shall forthwith report the matter to the Local Government which shall have power to deal with the matter in any way in which it thinks fit. S. 32.

The High court will not interfere with an order directing detention in a reformatory school rather than imprisonment but it is not precluded from alterting the sentence of imprisonment into a sentence of whipping, and in the latter case the order of detention falls to the ground. 13 Cr. L. J. 44 13 I. C. 284. 21 A. 391 Fol. 6. B. L. R. 550.

For further particulars see "Juvenile offenders." vol 1

The Indian Post Office Act VI of 1898.

The offences of theft, misappropriation, secretion, destroying or throwing away any postal article by an employee of the Post office are cognizable. S. 52.

Trial of offences under the Act.

All offences against the Act may be enquired into or tried in a presidency town, whether the offence is stated to have been committed within such town or not, provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. S. 184 Cr. P. C.

A prosecution under S. 61 although authorized by the Post Master General is illegal, unless such prosecution takes place on a complaint. 4 C. L. J. 170; 10 C. W. N. 1029.

That the opening of a newspaper by a person employed in the Post Office and replacing it in its envelope does not constitute an offence under the Act, as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted destroyed or threw away any letter or other article sent by post. There must be fraudulent intention in the act of the accused before he can be convicted. 10 W. R. 4. The accused being in the employ of Government in the Post Office department, while assisting in the sorting of letters secreted two letters with the intention of handing them to the delivery peon and sharing with him certain moneys payable upon them; since the intention of the accused was not to prevent the delivery of the letters to the addressees he was not guilty of the offence of secreting them within the meaning of that section. He was guilty of the offence of stealing and of fraudulently misappropriating the letters within the meaning of that section and of the offence of theft and attempt to commit dishonest misappropriation of property within the meaning of the I. P. C. 14 M. 229. An accused person was arrested and charged with offences under S. 381 I. P. C. and S. 52 of the Act for having stolen a registered letter from the post office and brought before a bench of Presidency Magistrates and was discharged considering the evidence insufficient. Subsequently the accused was rearrested on the same charge and was convicted by the Chief Presidency Magistrate. The accused appealed. It was held that the punishment was good, there is no express provision in the Cr. P. C., to the effect that the dismissal of a complaint shall be a bar to a fresh proceeding being entertained so long as the

order of dismissal remains unrevised. 1 C. W. N. 57; 1 C. W. N. 370, 23 C. 983; 24 C. 528; 28 C. 211. Transmission by post of printed post cards containing an advertisement of a patent medicine in language of an obscene character is an offence within S. 20 and 61 of the Act. 1 A. W. N. 94, 3 A. 837; 23 B. 193; 32 C. 247; 39 C. 377, 2 Cr. L. J. 201.

Sending cocaine by post is not an offence under S. 61 of the Act, though a conviction under S. 60(a) of excise Act will be upheld as cocaine is not noxious or dangerous substance. 37 A. 289; 13 A. L. J. 356; 28 I. C. 655; 16 Cr. L. J. 319; 5 Cr. L. R. 331.

A wrong entry in the postal accounts as to the date on which a money order was paid creates a suspicion and is not sufficient to warrant a conviction for misappropriation. Statements made by a person in a departmental enquiry in the absence of the accused are not admissible in evidence against him in a criminal trial. 26 I. C. 307; 4 Cr. L. R. 189; 16 Cr. L. J. 3. The accused sent a parcel in compliance with an order to send by registered parcel insured or by registered value payable post, uninsured, and at the time of despatch, made a declaration that the article was sent in execution of a bonafide order; held that the post office rules do not relate to the manner of sending under rule 133 and therefore the accused could not be convicted under S. 64 of the Act. 6 A. L. J. 481; 2 I. C. 228; 9 Cr. L. J. 537. The accused sent a copy of his magazine by V. P. P., to a person signing declaration in pursuance of the rule in execution of a bonafide order received by him. The addressee refused the article and the accused was prosecuted for making a false declaration. The Magistrate though found the declaration false acquitted the accused on the ground that the act does not require the declaration and the rules framed are not a part of the Act. Held that the Magistrate was wrong. 33 M. 511; 20 M. L. J. 402; 7 M. L. T. 69; 5 I. C. 738; 11 Cr. L. J. 215.

Where the only evidence against a post-man charged with misappropriating a telegraphic money order, is that the postal account contained entries of delivery on dates different from those on which the actual deliveries were made, that merely creates a suspicion and is not sufficient to prove misappropriation. Oral or documentary evidence as to the statements made by a post-man in the course of a departmental enquiry are not admissible in evidence in his absence. 16 Cr. L. J. 3; 26 I. C. 307. Money remitted by money order through the post office does not cease to be the property of the remitter until it is actually paid to the remittee. 52 I. C. 925.

The bona fides contemplated by rule 133 do not relate to the manner of sending a parcel. 6 A. L. J. 481; 9 Cr. L. J. 537, 2 I. C. 228.

The Indian Petroleum Act VIII of 1899.

Provisions.

The provisions of the Act which most concern Police officers are—(1) No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with, the conditions of a license granted under this Act. S. 11.

(2) No quantity of dangerous petroleum exceeding 40 gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions of a license from the Local Government. S. 5.

(3) No quantity of dangerous petroleum equal to or less than 40 gallons shall be kept or transported without a license.

Provided that nothing in this section shall apply in any case where the quantity of petroleum kept by any one person or on the same premises, or transported, does not

exceed three gallons, and the petroleum is placed in separate glass, stoneware or material vessel, each of which contains not more than a pint and is securely stoppered. S. 6.

(4) The penal provisions of the Act are contained in sections 15 and 16.

Licenses for motorists.

The rules under the Act require persons possessing motor-vehicles, who use dangerous petroleum, to take out the following licences :—

(1) *Form F.*—Special licence to possess and transport dangerous petroleum for owners of motor-vehicles;

Note:—District Superintendents of Police within their jurisdictions, and the Commissioner of Police, Madras, within the limits of the City of Madras, are empowered to grant to owners of motor-vehicles, licences in Form F, for the possession and transport of dangerous petroleum in quantities not exceeding 65 gallons.

(2) *Form L.*—General licence to the owner of a motor-vehicle to transport dangerous petroleum otherwise than on a motor-vehicle.

Inspection by Police officers.

Police officers not below the rank of Sub-Inspector are invested with powers under sections 12 to 14 of the Act and may require any dealer in petroleum, within the areas over which respectively, their authority extends, to show them any place and any of the vessels in which any petroleum in his possession is stored or contained, to give them such assistance as they may require for examining the same and to deliver to them samples of the petroleum on payment of the value of the samples.

Search warrant.

When a police officer receives information that petroleum is stored in any premises in contravention of the Act he should apply to the magistrate having jurisdiction for a search warrant.

Carbide of Calcium.

The importation, possession, sale and transport of carbide of calcium are regulated by rules issued under this Act.

'Transport' of petroleum involves the idea of removal and a mere order for petroleum which is sent accordingly is not transport. A person taking delivery of petroleum in excess of the quantity allowed by law and unable to show he was not in possession of it for a reasonable time is guilty under S. 15 (a). 20 Cr. L. J. 686; 52 I. C. 606. 39 I. C. 995 dist.

The word 'possession' in S. 15 (a) and 'amounts to keeping' within S. 11 which defines the quantity of petroleum, the keeping in excess of which amounts to an offence, must be understood with reference to S. 11 of the Act and a person receiving petroleum from the Company on the Railway premises will be adjudged guilty or not according as he is on the Railway premises within the permission of the Railway Company for a reasonable time or he uses it as godown or storehouse for purposes of sale. 1917 M. W. N. 720; 18 Cr. L. J. 627; 39 I. C. 995.

The Poisons Act XII of 1919.

Licenses.

(1) Under the rules under this Act a licence is required throughout the Presidency (with the exception of Agency tracts) for the possession for sale and sale of—

white arsenic,

sulphides of arsenic—

(i) red sulphide (realgar)

(ii) yellow sulphide (orpiment),

perchloride of mercury (corrosive sublimate) and aconite.

(2) In Municipalities and Cantonments a licence is also required for the possession for sale and sale of nux vomica cyanide of potash and stramonium (datura).

(3) Any police officer of, or above, the rank of Sub-Inspector may inspect the premises, stocks and books of a licence-holder.

(4) When there is reason to believe or suspect that poison is possessed or sold in contravention of the Act, or that

any poison, liable to confiscation under the Act, is kept or concealed upon any premises a search warrant should be applied for to the District or Divisional Magistrate.

(5) Circle Inspectors of Police will enter the names of holders of licences to sell poisons in the History of the Circle (Form 23).

A person acting in contravention of S. 10 and rules made thereunder of Indian Poisons Act, by selling retail poisons if he is not a qualified medical practitioner, or a registered chemist or druggist to claim exemption under S. 10, is guilty of an offence. The rules have no application to wholesale sales of poisons. 16 Cr. L. J. 764; 8 L. B. R. 532; 31 I. C. 364.

The Glanders and Farcy Act XIII of 1899.

The following are the duties of the Police under the rules framed under the Act:—

Rule II.—Every person having in his possession or under his charge any 'diseased' horse shall (1) keep the 'diseased' horse separate from other horses not diseased, and (2) give information of the fact as soon as possible to the Inspector under the Act, or, if there be no Inspector of any place nearer than the nearest police station, to that Police station, and the officer in charge of that station shall forthwith send a report of the same to an Inspector under the Act.

* * * *

Rule VIII.—If a veterinary practitioner certifies under section 8 of the Act that a horse is diseased, it shall be destroyed humanely in the presence of an Inspector. If the Inspector decides that the horse should be destroyed by shooting he may, if necessary, send a requistion in writing to the officer in charge of the nearest police station to depute a police officer for the purpose and the station-house officer shall comply with the requisition. The police officer deputed shall shoot the horse under the orders of the Inspector.

* * * *

The Motor-Vehicles Act VIII of 1924.

Requirements.

The following are the chief provisions of the Act:—

No person under the age of 18 shall drive a motor vehicle in public [section 3, sub-section (1)].

The person in charge of a motor-vehicle shall cause the vehicle to stop when required to do so (1) by any Police Officer, (2) by any person having charge of an animal when such person apprehends that the animal is or will be alarmed by the motor-vehicle and (3) when he knows or has reason to believe that an accident has occured, owing to the presence of the motor vehicle (section 4).

Reckless or negligent driving is punishable with fine up to Rs. 500 (section 5).

No person shall drive a motor vehicle in a public place without a licence and no owner shall allow his motor vehicle to be driven by an unlicenced person (section 6).

A driver shall produce his licence on demand by any Police Officer (section 8).

Every motor vehicle must be registered in the prescribed manner (section 10).

Registration.

(*a*) No motor-vehicle shall be used in a public place unless it has been registered in accordance with these rules or any other rules under the Act having application to the Madras Presidency :

Provided that no person shall be liable to penalty for breach of this rule if the motor-vehicle was being used in a public place for the purpose of being registered in accordance with these rules.

Provided further that every motor-vehicle which was registered under the rules formerly in force under the Madras Motor-Vehicles Act, 1907, such registration being still in force on the date from which these rules take effect, shall be deemed to have been registered under these rules.

(b) Registration of a motor-vehicle in the Madras Presidency will be dispensed with on production of evidence of registration in another province which is still in force.

The Governor in Council has exempted from further registration in Madras Presidency all motor-vehicles registered under the regulations in force for the time being in the Native States of Travancore and Cochin and in the Civil and Military Station Bangalore.

(c) After the expiration of three months from the date of publication of these rules, motor-vehicles which have been registered under the rules made under the Madras Motor-Vehicles Act, I of 1907, but which do not comply in all respects with the requirements of these rules, shall not, except for the purpose of being registered, be used on any road or street until they have been registered anew :

Provided that such vehicles shall be registered free of charge.

Producer in Respect of Registration.

Every application for registration shall contain the particulars entered in form A annexed to these rules.

Every registering authority shall keep a register in form B annexed to these rules and shall, on receipt of an application containing the particulars required by rule 3 for the registration of a motor-vehicle, and on payment of the prescribed fee, unless some reason to the contray exists, assign a separate number to the motor-vehicle, register it, and issue to the applicant a certificate of registration in form C annexed to these rules. If the registering authority declines to register the vehicle, he shall record his reasons in writing and shall communicate them to the applicant.

Fee for registration.

The fee payable in respect of registration shall be Rs. 4 for motor-cycles and Rs. 16 for all other motor-vehicles.

Transfer of ownership.

Every transfer of ownership, and every transfer of possession, whether temporary or otherwise, of a motor-vehicle registered under these rules, must forthwith be reported to the registering authority by registered owner and by the transferee.

Change of address.

Whenever the registered owner of a motor-vehicle changes his address, he must report the new address to the authority who registerd the vehicle.

Validity of registration certificates.

Certificates of registration granted under these rules shall be valid throughout the Madras Presidency and certificates of registry in other Provinces will also be accepted as valid in Madras.

Motor vehicles of manufacturers and dealers.

In the case of manufacturer of, or dealer in, motor-vehicles, a general number to be used on any motor-vehicle, belonging to such manufacturer or dealer, on trial after completion or on trial by an intending purchaser, may be assinged by the registering authority on payment of an annual fee of Rs. 30.

Such manufacturer or dealer shall distinctly mark every such vehicle by a letter or letters in addition to the dealer's general number under rule 9. He shall, if so required by the registering authority, keep in such form as the registering authority may direct, a register showing the name of the driver in charge of each of the motor vehicles when allowed to leave his premises and the hours and dates on which he was in charge of the vehicle. Such register shall be open to inspection on demand by any police officer of or above the rank of sub-inspector.

Conditions of registration of motors vehicles.

Before registering a motor-vehicle, the registering officer shall be satisfied that the following conditions are satisfied :—

(1) The motor-vehicle, if it exceeds in weight unladen 7 cwt., must be capable of being so worked that it may travel either forwards or backwards.

(2) The motor-vehicle must have two independent brakes in good working order and of such efficiency that the application of either will promptly stop the motor-vehicle.

(3) The motor-vehicle and all its fittings must be in such a condition as not to cause, or be likely to cause, danger to any person.

(4) The motor-vehicle must be so constructed and used that no smoke, visible vapour or incandescent material is emitted therefrom in such quantity as to cause annoyance or danger to the public except from some temporary or accidental cause.

(5) The motor-vehicle must be fitted with a silencer, expansion chamber or other contrivance, suitable and efficient for reducing, as far as may reasonably be practicable, the noise which is caused by the escape of the exhaust gases from the engine.

(6) If the motor-vehicle is propelled by steam, it shall consume its own smoke and shall be fitted with efficient spark arresters.

Subsequent defects.

Where any District Superintendent of Police or the Commissioner of Police, Madras, at any time after a motor-vehicle has been registered, has reason to believe that it has ceased to comply with the requirements of the Act or the rules made thereunder, or that it is not maintained in such a condition as to prevent danger to the public, such officer may, after notice to the registered owner direct that the registration be cancelled until such time as the defects are rectified to his satisfaction. Where such officer himself is not the authority who registered the vehicle, he shall report the fact that registration has been cancelled, to the authority who registered the vehicle.

Lights.

(a) No person may cause or permit a motor-vehicle to stand or be used in a public place between half an hour after sunset and half an hour before sunrise, or may drive a motor-vehicle when so used, unless it carries three lighted lamps of suitable design and illumination and so attached thereto as to prevent their movement; one of which shall be attached on either side of the front of the motor-vehicle exhibiting a white light in the direction in which the motor-vehicle is proceeding or is intended to proceed, and the third at the back of the vehi-

cle exhibiting a red light in the reverse direction and a white light at right angles thereto so placed and so efficient as to illuminate and render easily distinguishable the registered number of the motor-vehicle at a reasonable distance.

Provided that in the case of a motor-cycle, one headlight exhibiting a white light in the direction in which the motor-cycle is proceeding so placed and so efficient as to illuminate and render easily distinguishable the registered number of the motor-cycle and one red rear light exhibiting a red light in the reverse direction or a reflector so constructed and attached to the motor-cycle as to reflect a red light from any light carried on another vehicle approaching from behind shall be carried.

When a side car is attached to such motor-cycle, the side car shall also carry a white light showing to the front.

(*b*) The District Magistrate or the Commissioner of Police, as the case may be, may by notice published in the District Gazette or the Fort. St. George Gazette prohibit within any local limits—

(i) the use of acetylene or electric lamps of any description giving a powerful and intense light, or

(ii) the use of such lamps unless they are properly hooded or screened to the satisfaction of the District Magistrate or the Commissioner of Police as the case may be.

Use of horns, sirens and whistles.

Every person driving a motor-vehicle in public place shall have ready and available for immediate use a suitable horn capable of giving sufficient warning of the approach or position of the motor-vehicle. Provided that no siren nor any form of horn or whistle worked off the exaust or any horn sounding more than a single note shall be used in any place road or street where the use of such devices has been prohibited in the City of Madras by the Commissioner of Police and elsewhere by the District Magistrate.

Driving licenses.

A licence to drive a motor-vehicle shall be granted in the City of Madras by the Commissioner of Police and elsewhere by the District Superintendent of Police to any person who can satisfy such authority that he is a competent and careful driver.

Every licensing authority shall keep a register of driving licences in form E annexed to these rules and on receipt of the prescribed fee, and subject to the provisions of the rule following, shall, unless the applicant is disqualified under sections 3(i), 18(1) (i), 18(1) (ii) or 18(6) of the Act or under any other Act or rule having the force of law for the time being in force, grant him a licence in form F-1 annexed to these rules.

Provisional licenses.

No licence shall be granted until the applicant has satisfied the licensing authority as to his ability to drive a motor-vehicle without danger to the Public safety. Provided that an applicant who wishes to undergo instruction in driving may be given a provisional licence to drive in form F, one condition of which shall be that when so driving he shall invariably be accompanied by the holder of a substantive licence.

Validity of licenses.

Every licence granted or renewed under these rules shall, subject to the provisions of the Act as regards cancellation and suspension, be in force for one year from the date of issue and shall be valid through out the Madras Presidency. The holder of a licence to drive current in a province other than Madras shall not during the currency of his licence be required to take out a fresh licence to drive in the Madras Presidency.

Fees for the grant of Licenses.

The fee for the grant or renewal of a licence shall be Rs. 2. On sufficient cause being shown, a duplicate thereof may be granted by the original licensing authority on payment of a fee of Rs. 10 (ten). The word "*Duplicate*" shall be clearly shown in red ink across a duplicate licence.

Leaving motor vehicles in public places.

No person in charge of a motor-vehicle shall allow it to stand in a public place so as to cause or be likely to cause

unnecessary obstruction to traffic; nor unattended by a person licensed under the Act unless all reasonable precautions have been taken to prevent it moving or being moved.

Speed limits.

The local Government may by notification in the official Gazette prohibit the driving of motor-vehicles altogether in any public place or places or may restrict the driving of motor-vehicles in such place or places to such maximum speed as may be indicated upon notice boards erected at the limits of such public place or places.

Rule of the road.

(*a*) A motor-vehicle shall be driven in accordance with the rules of the road which require a vehicle to keep on the left of the road except when passing horses and other vehicles going in the same direction which should be passed on the right and provided that it should ordinarily pass a tram-car on the left or rear side whether it be going in the same or the contrary direction.

(*b*) The driver of a motor-vehicle when turning into a side street, if to the left shall keep close to the corner, if to the right shall make a wide curve. He shall further when about to turn to the right hold out his right hand horizontally to the right of the vehicle and when about to stop raise his hand vertically, palm to the front.

(*c*) A motor-vehicle entering a main road from a branch or side road should enter the main road slowly and give way to vehicles travelling on the main road.

Drivers to obey directions of Police Officers.

The driver of a motor-vehicle shall obey direction of a police officer for the time being in charge of the regulation of traffic in any public place.

A direction to stop may be made by a police officer raising his hand above the level of his head as a signal or at night in such manner as the licensing authority may direct.

Competition, Reliability Trails, Etc.,

No competition, reliability trial, display or exhibition in which more than five motor-vehicles are expected to take, or actually take, part shall be permitted in a public place without

the written permission of the District Superintendent of Police, or in the city of Madras, of the Commissioner of Police, who may impose such special restrictions as he may think fit.

Within the limits of the City of Madras or of any Municipality, no driver of a motor-cycle shall carry a passenger thereon nor shall he tow any other cyclist thereby.

(1) Motor-vehicles which are intended to be let or to ply for hire in any local area or along any public road in the Presidency shall possess special permits in form G annexed to these rules granted by the Commissioner of Police in the City of Madras or the District Magistrate elsewhere, and shall be subject to the conditions prescribed in such permits.

(2) Every motor-vehicle which is let or plies for hire shall be registered annually.

(3) The fee payable for the first registration of such motor-vehicle shall be Rs. 16 and the fee payable for renewal of registration shall be Rs. 8.

Fee for Registration, for heavy motor vehicles.

The fee payable in respect of registration of a heavy motor-vehicle shall be Rs. 32. Such registration shall continue in force for a period of not more than twelve months from the date thereof. Registry may be renewed annually on payment of a fee of Rs. 16.

Special Conditions to be fulfilled.

The registering authority shall decline to register a heavy motor-vehicle unless he is satisfied that it fulfils all the conditions special to heavy motor-vehicles laid down by rules made under the Act and in order that he may so satisfy himself, he may require the production of the heavy motor-vehicle at such time and place as he thinks fit and may also cause the weight of the heavy motor-vehicle and the axle-weight of each axle to be ascertained in such manner as he may by general or special order direct.

Registration authority may cause the axle weight for the time being of any axle of a heavy motor vehicle to be ascertained.

When the registering authority or any officer duly authorized by him in this behalf has reasonable ground for suspecting that the axle-weight for the time being of any axle

of any heavy motor-vehicle or trailer drawn thereby exceeds the registered or marked axle-weight of that axle he may cause the axle-weight for the time being of any such axle to be ascertained.

The person driving or in charge of such motor-vehicle shall to the best of his ability afford all such facilities as may reasonably be necessary for the purpose of ascertaining the axle-weight as aforesaid.

Registered weight to be painted on vehicle.

Unless he declines in accordance with rule 34 to register a heavy motor-vehicle, the registering authority shall proceed in accordance with rule 4 above and, upon receiving the certificate in form C, the owner of the motor-vehicle shall cause—

(*a*) the highest rate of speed at which, in conformity with the rules, the heavy motor-vehicle may be driven,

(*b*) the registered weight of the heavy motor-vehicle unladen, and

(*c*) the registered axle-weight of each axle

to be painted or otherwise plainly marked in letters not less than one inch in height, and in such a manner as to be legible at a reasonable distance, upon some conspicuous part of the left or rear side of such heavy motor-vehicle in the case of (*a*), and in the case of (*b*) and (*c*) of the right or offside.

Conditions for the use of heavy motor vehicles.

No person shall cause or permit a heavy motor-vehicle to stand or be used in a public place or shall drive or have charge of a motor-vehicle when so used unless the following conditions are satisfied :—

(1) (i) The axle-weight of any axle of a heavy motor-vehicle shall not exceed the registered axle-weight.

(ii) The registered axle-weight of any axle of a heavy motor-vehicle shall not exceed eight tons and the axle-weight of a trailer shall not exceed four tons.

(iii) The sum of the registered axle-weights of all the axles of a heavy motor-vehicle shall not exceed twelve tons.

(2) The tyres of each wheel of a heavy motor-vehicle unless the tires are pneumatic or made of a soft or elastic material, shall be smooth and shall, where the tyre touches the surface of the road or other base whereon the heavy motor-vehicle moves or rests, be flat, provided that the edges of the tyre may be levelled or rounded to the extent in the case of each edge of not more than half an inch:

Provided also that—

(i) if the tyre is constructed of separate plates, the plates may be separated by parallel spaces which shall be disposed throughout the outer surface of the tyre so that no where shall the aggregate extent of the space or spaces in the course of a straight line drawn horizontally across the circumference of the wheel exceed one eighth part of the width of the tire;

(ii) the driving wheels of a heavy motor-vehicle shall be cylindrical and smoothsoled or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tyre, and the space intervening between each such cross-bar shall not exceed three inches.

(3) The width of the tire of each wheel of a heavy motor vehicle shall be determined by such of the following conditions as may apply to the circumstances of the case; that is to say—

(*a*) the width shall in every case be not less than five inches;

(*b*) the width shall be not less than that number of half inches which is equal to the number of units of registered axle-weight of the axle to which the wheel is attached.

The unit of registered axle-weight shall vary according to the diameter of the wheel, and the rules set forth in the sub joined scale; that is to say—

(i) if the wheel is three feet in diameter, the unit of registered axle weight shall be $7\frac{1}{2}$ cwt.

(ii) if the wheel exceeds 3 feet in diameter, the unit of registered axle-weight shall be $7\frac{1}{2}$ cwt. with an addition of weight in the proportion of one hundred-weight for every 12 inches by which the diameter is increased beyond 3 feet; and in the same proportion for any increase which is greater or or less than 12 inches, and

(iii) if the wheel is less than 3 feet in diameter, the unit of registered axle-weight shall be $7\frac{1}{2}$ cwt. with a deduction of weight in the proportion of one hundred-weight for every 6 inches by which the diameter is reduced below 3 feet, and in the same proportion for any reduction which is greater or less than 6 inches:

Provided that this clause shall not apply to any tire, which is pneumatic or which is made of a soft or elastic material.

(4) The diameter of a wheel of a heavy motor-vehicle if the wheel is fitted with a tire which is not pneumatic or is not made of a soft or elastic material, shall be not less than 2 feet.

(5) A heavy motor-vehicle shall, when measured between its extreme projecting points, be of a width not exceeding 7 feet 6 inches, and no heavy motor-vehicle or train made up of a motor vehicle with one or more trailers attached to it shall be used in any public place if such motor-vehicle or train exceeds 36 feet in length. The height of a heavy motor-vehicle when loaded and measured from the ground level to the highest point of the hood or load whichever is higher shall not exceed 10 feet.

(6) The heavy motor-vehicle shall be constructed with suitable and sufficient springs between each axle and the frame of the heavy motor-vehicle.

Opening of cylinder taps and blowing of off teams.

The cylinder taps of a heavy motor-vehicle propelled by steam shall not be opened within sight of any person

driving, riding, leading or in charge of any horse upon the road or street, nor shall the steam be allowed to attain such a pressure as to exceed the limit fixed by the safety-valve so that no steam shall blow off when the vehicle is upon the road or street.

Conditions for the use of trailers.

No person shall haul, by means of a heavy motor-vehicle, in any public place, more than three trailers at a time, nor any trailer, unless the following conditions are satisfied:—

(i) Each trailer shall satisfy the conditions laid down for heavy motor-vehicles as to registered maximum axle-weight tires, width of tire, size of wheels, width of vehicle and springs, save that, in the case of a trailer, the registered maximum axle-weight shall not exceed four tons and that the minimum width of tire shall be three inches save in the case of trailers not exceeding one ton in weight unladen which shall be exempted from the prescribed requirements as to width of tire;

(ii) each trailer attached to a heavy motor-vehicle shall have a brake approved by the registering authority and each trailer shall carry upon it a person competent to apply the brake efficiently, provided that, where the brakes upon the motor-vehicle to which any trailer is attached are so constructed and arranged that neither of them can be used without bringing into action simultaneously the brake attached to the trailer, or if the brakes of the trailer can be applied from the motor-vehicle independently of the brakes of the latter, this rule shall not apply;

(iii) the motor-vehicle shall not at the time be in use as a public conveyance.

Driving on bridges.

(i) Where any duly constituted authority affixes or sets up in suitable and conspicuous positions, on each approach to bridge, forming part of a high way, notices stating the carrying capacity of the bridge which, as regards all their contents or subject matter, are clearly and distinctly legible and visible by persons approaching the bridge, the owner of a heavy motor-vehicle, the combined registered axle-weight of which exceeds the carrying capacity of the bridge as specified

in the said notice shall not cause or suffer the motor-vehicle to be driven, and the person driving or in charge of the motor-vehicle shall not drive the motor-vehicle upon the bridge.

(ii) The owner of a heavy motor-vehicle shall not cause or suffer the motor-vehicle to be driven and the person driving or in charge of a heavy motor-vehicle shall not drive the motor-vehicle, upon a bridge forming part of a highway at any time when another heavy motor-vehicle is on the bridge, if the combined weights vehicles exceed the carrying capacity of the bridge.

Speed limits.

No person shall drive a heavy motor-vehicle in any public place at a speed exceeding seven miles an hour :

Provided that—

(*a*) if the weight of the motor-vehicle unladen exceeds three tons, or

(*b*) if the registered axle-weight of any axle exceeds six tons, or

(*c*) if a trailer is attached to the heavy motor-vehicle, the speed shall not exceed five miles an hour :

Provided also that—

If the heavy motor-vehicle has all its wheels fitted with pneumatic tires or with tires of a soft or elastic material, the speed shall not exceed—

(*a*) twelve miles an hour where the registered axle-weight of any axle does not exceed six tons,

(*b*) seven miles an hour where such registered axle-weight exceeds six tons.

In exercise of the powers conferred on him by section 11 of the Indian motor-vehicles Act, 1914, and in continuation of rule 25 of the Madras Motor-vehicles rules, 1916, the Governor in Council hereby directs that no motor-vehicle of any description shall be driven along any of the roads within the limits of the Kodaikanal Municipality in the Madura district at a speed exceeding ten miles an hour. (G. O. No. 1991, Home (Judicial), dated 9th August 1916).

In exercise of the powers conferred on him by section 11 of the Indian Motor-vehicles Act, 1914 (VIII of 1914), and in continuation of rule 25 of the Madras Motor-vehicles Rules, 1916, the Governor in Council hereby directs, that no Motor-vehicle of any description shall be driven from the weekly market to the junction of the Yeleswaram and Rajahmundry roads in the Peddapuram municipality in the Godavari district at a speed exceeding twelve miles per hour. G. O. No. 656, Home (Judicial), dated 20th March 1917.

No motor buses shall be driven in the Chinnakadai and Big Bazaar roads, between the hours of 9 A. M. and 9 P. M. G. O. No. 2447, Home (Judicial), dated 1st October 1920.

Held that the "word employs" used in the Act, means 'has or retains' in his employ and not takes into his employ. 15 Cr. L. J. 677; 25 I. C. 1005.

Where an owner has permitted or authorised the use of his motor-vehicle, he is under the rules framed by the Governor in Council under S. 11, of the Act, liable for any contravention of the acts committed by his licensee or servant during the period of such user. 26 C. L. J. 37; 22 C. W. N. 72.

Rules 10 and 17 made under the Act only apply to the driver or to a person using the car at the time it is being driven, and not to an absent owner in whose absence his servant may drive his motor-car without lights after lighting up time. 19 Cr. L. J. 928; 47 I. C. 444.

Rule 16 (a) of the Madras Motor vehicles rules (concerning the lights of motor cars) does not apply to an absent owner. 26 M. L. T. 331; 10 L. W. 399; 20 Cr. L. J. 825; 53 I. C. 825.

The acquittal of a person charged under S. 338 I. P. C., with having caused grievous hurt by rashly driving a motor car, on the ground that it is not proved that he was driving the car, is under S. 403 Cr. P. C., a bar to the trial of that person under S. 16 of the Act for driving the car without a licence so long as his acquittal on the same facts for a different offence remains in force. 59 I. C. 207; 22 Cr. L. J. 63.

If "upon demand" by a Police officer a person driving a Motor-vehicle could not produce his driving licence then and there, he is guilty under S. 8 of the Act. 18 A. L. J. 333; 58 I. C. 148.

Where the driver of a taxicab negligently drove the same into a drain causing injury to the passengers in the car, Held that the owner of the taxicab was liable to prosecution and punishment under S. 16 of the Act read with rules 3 and 19, for the act of his driver. 45 C. 430.

There is no prohibition against the driving of a motor-car by a properly licensed person who has not got license with him, it is only the non-production of the license upon demand by a Police officer that is an offence. The suspension of a license of a Motor driver under S. 18 (2) of the Act, if ordered in addition to the imposition of a fine for an offence under S. 16 of the Act, is a part of the sentence, as an order under S. 565 Cr. P. C., is. An order of imposing fine for an offence under S. 6 of the Act is appealable and also subject to revision by a High court. 65. I. C. 425; 23 Cr. L. J. 73; 20 I. C. 214; 14 Cr. L. J. 390. fol.

S. 11 (2) (a) of the Motor vehicles Act does not empower a Local Government to prescribe by rule the duration of time during which a certificate of registration shall be valid. 23 Cr. L. J. 170; 65 I. C. 633.

The Madras Estates Land Act 1 of 1908.

Police aid at distraint.

(1) When an application is made by a person authorized to distrain under section 80 or 85 of the Act for police aid at the time of distress or of forcible entry into a dwelling-house for the purpose of distress, the station-house officer is bound to depute one or more police officers to be present at the time of such distress to prevent a breach of the peace. The person authorized to distrain is either the land-holder or his duly authorized agent (section 78). An agent must be duly authorized by means of a written authority under the hand of

the land-holder (section 214). If the distrainer is not the land-holder, but an agent, the station-house officer should satisfy himself that the agent possesses the necessary written authority from the landholder. A report of the facts will be made in the station General diary and the original application, if made in writing, forwarded with it. If the Superintendent or sub-divisional police officer considers that anything should be brought to the Collector's notice, he should take necessary action. The provisions of this Act do not apply to the Presidency town, the district of Malabar and the portion of the Nilgiri district known as the South-East Wynaad.

Execution of warrant of eviction.

(2) Under section 160 of the Act, the Police are required to execute a warrant of eviction of tenants. Such warrants are of the nature of notices, and they must be served by delivering a copy to the defaulter or to some adult male member of his family at his usual place of abode, provided it is in the neighbourhood of the land to which the distress refers, or to his authorized agent, or when such service cannot be effected, by affixing a copy of the notice on some conspicuous part of the land to which it refers (section 78). If within fifteen days after service, or within the period extended by the Collector under section 159 of the Act, the amount named in the warrant is not discharged, and if no suit has been filed by the defaulter before the Collector to set aside the warrant, or if such suit has been decided against the defaulter, the police officer shall place the landholder in possession of the tenant's holding (section 160).

The Act is a comprehensive tenancy code and where it is explicit a discussion of the general law is irrelevant. 31 M. L. J. 354; 2 M. W. N. 180; 4 L. W. 168; 37 I. C. 1.

A Dy. Collector has no jurisdiction to cancel orders passed by his predecessor in office. The proper procedure is to ask the Dt. Collector to revise them. 32 I. C. 891.

S. 189 of the Act does not take away the right to bring suit in the civil court to set aside a sale on the ground of fraud and hence such a suit is maintainable in such court.

S. 189 bars only an application under S. 131. 14 M. L. T. 523; 26 M. L. J. 36, 21 I. C. 762, 14 M. L. T. 523 Foll. 38 M. 1042.

The penal provisions of the Act are in addition to and not in substitution for those in the penal code. 38 M. 793; 15 Cr. L. J. 295, 23 I. C. 503.

The High court has the power of revision in respect of orders passed under the Act. The exercise of this power is always discretionary. 42 M. 310; 36 M. L. J. 571; 51 I. C. 684.

No appeal lies to the Dt. Court against the order of a Revenue court granting a review in a summary suit. 18 I. C. 549, 24 M. L. J. 93, 2 L. W. 62; 26 I. C. 831.

Where the collector wrongly entertains an appeal it is open to the Board of Revenue even in the absence of a second appeal to pass appropriate orders under S. 203 of the Act. 34 I. C. 460.

S. 205 of the Act gives concurrent jurisdiction to the Dt. Collector and the Board of Revenue to revise the orders made by Revenue officers. "Revenue officer" in S. 205 of the Act does not include a Dt. Collector. The Board of Revenue has no power to revise the order of a Dt. Collector passed in the exercise of his power of revision under S. 205 of the Act. 12 L. W. 145; 59 I. C. 345. The Board of Revenue cannot revise under S. 205 an order refusing to recognise the application as landlord under S. 3 (5), as the revisional powers of the Board, are very limited. 40 I. C. 1007.

The Indian Registration Act XVI of 1908.

Cognizable offences.

The following offences under the Act are cognizable by the Police :—

(i) intentionally making false statements whether on oath or not before the Registering officer; or

(ii) intentionally delivering to such officer in proceedings under sections 19 and 21 a false copy or a false translation ;

(iii) falsely personating another and in such assumed character presenting any document or making any admission or statement or causing any summons or commission to be issued or doing any other act; and

(iv) abetting within the meaning of the Indian Penal Code anything punishable under this Act.

The Board of Revenue cannot refer to High Court a question under the Registration Act. 38 A. 351; 14 A. L. J. 422, 34 I. C. 280.

The object of registering a document is to give notice to the world that such a document has been executed. 31 A. 523; 6 A. L. J. 627; 6 M. L. T 5; 3 I. C. 506. The object of registration is to check forgery and to provide good evidence of the genuineness of written instruments and not to give information to third parties. 24 M. L. J. 664; 14 M. L. T. 237; 20 I. C. 385. Registration in the wrong book is no valid registration especially where that was at the instance of the parties to the document. 18 M. 364; Dist. 23 M. 580 Comp. 20 C. 654; 18 C. 556, 35 C. 845; 55 I. C. 213.

A copy of the deed granted under S. 57 (5) is admissible in evidence. 36 I. C. 673.

If the Sub-registrar is dead, the endorsement made by him under S. 58 of the Act read with S. 32 (2) I. E. A., may be admitted, being an entry made by him in the discharge of his professional duty. 38 I. C. 605.

Where there is a presentation of a document by a person not authorised the registration is void and of no effect not withstanding the certificate. 37 A. 49, 19 C. W. N. 282; 17 M. L. T. 148, 2 L. W. 277, 28 M. L. J. 577, 28 I. C. 422. Distd. 42 A. 487, 39 M. L. J. 41, 58 I. C. 386.

The registering officer's endorsement is admissible in evidence to prove that the facts mentioned therein actually occurred. 8 I. C. 291.

S. 83 of the Act lays down that a prosecution for any offence under the Act coming to the knowledge of the Registering officer in the official capacity may be commenced by or with the permission of certain Registration officers specified in the section. The word 'Sanction' is not used at all. All that is required before a prosecution under the Act can be commenced is that permission should be given by a Registration officer mentioned in S. 83 of the Act. 39 A. 293, 15 A. L. J. 136, 18 Cr. L. J. 546, 39 I. C.

No prosecution of an offence under S. 82 can be initiated without the permission of some Registering authority mentioned in S. 83. 37 A. 107; 14 A. L. J. 412; 17 Cr. L. J. 465; 36 I. C. 145.

For the institution of proceedings by a private person for offences under the Act the permission of the officers specified in S. 83 is not a preliminary requisite. The words 'may be commenced' in the section do not exclude complaints by private persons. 40 M. 880, 21 M. L. T. 118, 5 L. W. 414, 18 Cr. L. J. 416, 38 I. C. 976. Foll. 40 M. L. J. 211, 1921 M. W. N. 144; 62 I. C. 582.

If a document, presented to the court appears to be duly stamped and registered, the court cannot take cognizance of any irregularity in its registration. 36 B. 564; 14 B. L. R. 45, 14 I. C. 353.

Fraud on the Registrar effecting registration of a document is equivalent to non-registration. 50 I. C. 220.

The Indian Emigration Act XVII of 1908.

Emigration defined.

To emigrate under this Act means to depart by sea out of British India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon or the Straits Settlements. S. 2.

Powers and duties.

No offence under the Act committed by any person licensed to recruit under it is cognizable, but any Police officer may arrest without warrant any other person who:—

(1) makes, or attempts to make, any agreement with any native of India purporting to bind him to emigrate, or

(2) in consideration of any hire or reward, induces, or attempts to induce, any Native of India to leave any place for the purpose of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or,

(3) in consideration of any hire or reward, receives into or detains in any place any person (being a native of India) with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the depot at the port of embarkation. S. 82.

Production of license.

Every recruiter must produce his license when called upon by any Magistrate or Officer in charge of a Police station to do so. S. 16 (3).

Production of statement of terms.

Every recruiter, if required, must produce for the information of any Magistrate or Officer in charge of a Police station a statement signed by the Emigration Agent and counter-signed by the Protector of Emigrants of the terms of agreement which he is authorized to offer on behalf of the Agent to intending emigrants.

Inspections of depots.

No Police Officer below the rank of Assistant or Deputy Superintendent of Police may inspect depots for emigrants.

Sub-depots situated elsewhere than at the headquarters of the district or subdivision shall be inspected at least once in every six months by a police officer of rank not lower than that of a Deputy Superintendent. The visits should take place without notice and at irregular intervals [rule (II)].

The Inland Emigration Act XVII of 1908.

This Act refers to emigration from one part of India to another.

Offences.

There are no cognizable offences under the Act, but an employer, or any person authorised by him for the purpose may, without a warrant and without the assistance of a

Police officer arrest any labourer who has deserted from his service, unless the latter when found within 5 miles of the place where the Magistrate resides, or is in the service of another employer, when he may not be arrested without a warrant.

Every Police officer must assist in an arrest made as above, if required by the employer or the person authorised by him to arrest.

Whoever arrests a labourer as above, must take him without delay to the nearest Police station under pain of a fine which may extend to Rs. 200. S. 195.

Definition of "employer" and "labourer".

An "employer" means the chief person for the time being in charge of an estate upon which labourers or more than 50 other persons are employed.

A "Labourer" means any person bound by a contract penally enforceable under the Act to labour for hire otherwise than as a domestic servant in any of the districts of Lakshimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara, Cachar or Sylhet in the province of Eastern Bengal and Assam and includes a person registered as a labourer under the Act.

The provisions of the above paragraph do not apply to any other class of persons.

Inspection.

No officer of or below the rank of Sub-Inspector may inspect depots or places approved by a Magistrate for the accommodation of labourers.

The Indian Army Act VIII of 1924.

Capture of deserters.

The powers and duties of the Police under this Act are contained in the following sections:—

(1) Whenever any person subject to this Act deserts, the commanding officer of the corps department or detachment to which he belongs shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such

authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended to military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law. S. 123.

Arrest by Civil authorities.

Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer. S. 125.

See S. 549 Cr. P. C. as to trial of Military offences by Court-martial.

For rules made under S. 549 Cr. P. C., see Government of India Home Department notification, dated 30th April, 1897.

A non-commissioned officer is merely a soldier and not an 'officer' within the Act and his pay is exempted from attachment. 42 I. C. 90.

The salary of an officer of His Majesty's Regular forces cannot be attached. 1 C. W. N. 138, 24 C. 102; 25 M. 402; 33 A. 529; 8 A. L. J. 487, 9 I. C. 1023. Military Assistant Surgeons in Indian subordinate service are warrant officers and so soldiers and therefore their pay was altogether exempt from attachment. 10 I. C. 719.

Military offenders.

There are two classes of military men in India. Firstly the officer or soldier (usually a European); and secondly, the native officer or soldier. The first class includes all officers and soldiers serving with his Majesty's British forces in India and British officers serving with the Indian Army, and the second,

Indian commissioned and warrant officers, and all Indian soldiers in the Indian Army, and also on active service and on the frontier, certain camp followers (S. 2). For Police purposes both classes are alike, in that members of either may be arrested for cognizable offences in the same way as civil offenders, provided that they are not in military custody already, and must be taken before the nearest Magistrate having jurisdiction.

Whenever any one subject to the Indian articles of war is arrested, notice shall be given forthwith by the Police to the officer commanding the troops to which he belongs.

To all Indians whether commissioned officers or not, who belong to His Majesty's Indian Army and when on active service on the frontier this Act is applicable but British officers and soldiers in His Majesty's British forces serving in India are subject to the Act and as well to English Military law.

A military man is "on active service" within the meaning of the statute, whenever he is attached to or forms part of a force which is engaged in operations against an enemy including armed mutineers, armed rebels, armed rioters and pirates or is engaged in military operations in a country or place wholly or partly occupied by an enemy or is in military occupation of any foreign country.

"Civil" here means "civil" as opposed to military and includes offences against the Criminal Procedure Code.

Gambling Act II of 1867 (as amended up to 1911).

Issue of warrant.

If the District Magistrate or any other officer with the full powers of a Magistrate or the Superintendent of Police has reason to believe upon credible information and after such inquiry as seems necessary, that any house, etc., is used as a common gaming house, he may himself enter, or by his warrant authorize any Police officer of and above the rank of Sub-Inspector to enter such place with such assistance as may be necessary, by day or night, and by force, if necessary, and he or the officer authorized by him as above on each behalf may—

(a) arrest all persons found there, whether gaming or not;

(b) seize all instruments of gaming, money, securities for money and articles of value reasonably suspected to have been used for gaming, found there;

(c) search all parts of the place, when he has reason to believe that instruments of gaming are concealed there;

(d) search the persons of those taken into custody; and

(e) seize all instruments of gaming so found.

It is not necessary for the officer actually to see gaming going on in order that the place is a common gaming house. If instruments of gaming other than cowries are found in the place or on the persons of those present, it is sufficient to raise a presumption that it is a gaming house, and that the persons found there were present for the purpose of gaming, till the contrary is proved. 62 I. C. 332; 22 Cr. L. J. 508.

An offence under the Act is bailable and non-cognizable except in the above circumstances.

Any Police officer may arrest any person found—

Gambling in a public place.

(a) playing for money or any other valuable thing, cards or any other instrument of gaming (provided the game is one not of mere skill) in any public market, fair, street place or thoroughfare; or

(b) setting any birds or animals to fight in any such place or there present aiding and abetting in doing so;

and may seize all birds, animals or instruments of gaming found there or on the person arrested. The police officer must take whomsoever he arrests before the Magistrate without delay. The offence is bailable.

Gaming, defined.

"The word gaming" is used in the sense of playing a game for a stake or a prize or for money or other thing waged on the issue of the game. Also the word game and its verbal grammatical forms do not necessarily involve the idea of chance wholly or to a larger extent than skill. 40 M. 556.

Common gaming house, defined.

A "common gaming house" means any house, tent, room space or walled enclosure in which cards, dice, tables, or other instruments of gambling are kept or used, or rain-gambling is carried on, for the profit or gain of the person owning, occupying or keeping the house, etc., whether by way of charge for use of instruments or of the house, etc., or any way whatsoever.

"Instruments of gaming" includes books or registers in which rain-gambling wagers are entered, all other documents containing evidence of such wagers and anything used as a means of rain-gambling.

Gambling in itself is not an offence. To be an offence it must be carried on in a common gaming house or in a public place. 3 N. W. P. 1.

A game of skill (e. g, whist or Billiards) is not an offence even if played for money (S. 10). The essence of gaming is that chance should predominate.

Gaming in a place that belongs to a private person, though open to public view, is not an offence unless that place is a common gaming house within the definition given above, in which case the offence is only cognizable as laid down above. 2 N. W. P. 289.

When the public have access to a place without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not. The accused were convicted of gambling in an area occupied by a large private grovr at a time when a fair was in progress there and visitors to the fair had penetrated to all parts of the grove without any interference. Held, that the accused were gambling in a public place and rightly convicted. 65 I. C. 419; 23 Cr. L. J. 67.

Public place defined.

A public place must be a place which is either open to the public and is used by the public, and the publicity of its situation is not a necessary element of the offence. 261, C. 41; See S. 159 I. P. C. for the definition of public place.

A part of the compound of a Hindu temple is a place of public resort. Every member of the public need not have a right of access to a place in order to make it a place of public resort. 40 M. 556; 31 M. L. J. 285; 18 Cr. L. J. 7; 36 I. C. 839.

A bullock-den surrounded by low wall of loose bricks is a "place" within the meaning of the Act. 38 A. 47; 16 Cr. L. J. 826. 31 I. C. 1002.

Conviction under S. 3 and 4 for gambling in a temporarily constructed shelter is irregular. An illegal conviction by a Magistrate ought to be set aside in revision. A Magistrate has no jurisdiction to distribute the fine levied among the witnesses and the Police. 20 Cr. L. J. 303; 50 I. C. 351.

A person simply allowing the use of his house to gamblers during a Depavali festival without any idea of demanding rent etc., cannot be said to keep a common gaming house. 20 Cr. L. J. 233; 50 I. C. 171.

The lessee of a house, who permitted disorderly people to use it for gambling, and thereby caused annoyance to the public, was convicted of an offence under S. 290 I. P. C. 14 M. 364.

To sustain conviction for keeping a common gambling house the prosecution must prove not only that he owned the house, or was the occupier of it and that the instruments of gambling were kept or used in it, but that they were kept or used for his benefit or gain. 19 Cr. L. J. 958; 47 I. C. 810.

On the search of a house persons were found therein engaged in gambling and instruments of gaming were also found. There was evidence that the owner made profit by allowing his house to be used as a place for gambling. Held, that it must be presumed that the house was a common gaming house in absence of evidence to the contrary. 42 A. 470, 21 Cr. L. J. 438; 56 I. C. 230.

Gambling at a place near a public street and exposed to public view but which was not a part of the public street is not an offence under S. 13. 21 Cr. L. J. 512; 56 I. C. 672.

The gist of the offence under S. 13 is such publicity of action that the ordinary passer-by cannot avoid seeing it and get enticed in consequence. A private property though not dedicated to the public use, may yet become public according to its locality and the actual use it is put to. 14 Cr. L. J. 670; 21 I. C. 919.

Canal bank belonging to Government and not frequented by the public nor dedicated to public use is not a public place within the meaning of the Act. 3 A. L. J. 53; Ref. 29 C. 606.

A verandah of a house is not a public street. 1 Weir. 915.

Gambling on a pial of a private house is no offence under cl. (10) by S. 3 of the Act. 3 M. L. T. 137.

Gaming in a vacant unenclosed site is not a common gaming house which would mean an enclosed place. 1 Weir 919.

The presence of cards, counters, and so called 'hundi boxes on the premises, is a strong presumption that it is a common gaming house, and the owner of it, when he makes a profit out of it is presumed to keep a common gaming house, and the persons present on the spot are guilty of gaming in the absence of rebutting evidence. 15 Cr. L. J. 407; 23 I. C. 1008.

Common gaming houses are houses in which instruments of gambling were found and money was paid to the owner of the house for allowing game therein. The mere fact of cards being played in a house is no ground for presuming it to be a common gaming house. 1 Weir 918.

It must at least imply that the house was one used as a place of public resort. Where there is no evidence that a house was either open to the public or kept for the profit of any person as a place of public resort, a conviction is not maintainable. 1 Weir. 917.

Where a house is not proved to be a common gaming house, the presence of other persons therein will not raise a presumption against him, and even if it were one, no presumption will arise against such persons, unless it can be shown that gambling was going on at the time when they were present. 16 A. L. J. 760; 19 Cr. L. J. 958; 41 I. C 810.

Ring game is not a game of mere skill. The onus to show that any offence falls within a general exception of the Act is upon the accused. 8 A. L. J. 126, 12 Cr. L. J. 612, 12 I. C. 988, 34 A. 96; 61 I. C. 518; 22 Cr. L. J. 390; 15 Cr. L. J. 276; 23 I. C. 484; contra 14 Cr. L. J. 452; 20 I. C. 612. 20 I. C. 612, 17 C. W. N. 883, 40 C. 702.

In a case 19 persons were convicted under the Act, one under S. 3 for keeping a gambling den and the rest under S. 4 for frequenting it and gambling there. Held, that the joint trial of all the 19 persons was illegal and the conviction to be set aside. 28 I. A. 257. 25 M. 61; 11 Cr. L. J. 211; 5 I. C. 720; contra 14 Cr. L. J. 293; 19 I. C. 949.

Where one M made a statement to the Magistrate that B kept a common gaming house in which many persons used to gamble and in consequence of such statement, the Magistrate issued a warrant directing the search of B's house and the arrest of all persons found therein. Held, that the statement so received was not a complaint within the meaning of S. 4 Cr. P. C., as it did not refer to any offence that was committed before the complaint was made and because it was not made in order to induce the Magistrate to take any action under the Cr. P. C., but in order to induce him to proceed under the Act. 15 Cr. L. J. 657; 25 I. C. 985.

S. 11 of the Act allows the acquittal of an approver only if a disclosure is made and is believed to be true and faithful. 18 Cr. L. J. 494; 39 I. C. 334; 20 O. C. 4.

Search warrants issued under the Act are governed by the provision of Cr. P. C., which provides for the issue of warrants in general. Consequently a search warrant may be

endorsed by a Police officer, to another who is not of a rank below that authorised under the Act to enter and search. 5 A. L. J. 59. 7 Cr. L. J. 19; 30 A. 60. Foll. 42 A. 385, 58 I. C. 241.

A warrant that is not a legal warrant is no warrant for the purpose of gambling Act. Omisssion to affix the seal of the court on a search warrant issued under the Act is a mere irregularity curable by S. 527 Cr. P. C. 11 Cr. L. J. 570; 8 I. C. 137.

A warrant authorizing the search of any house, which the Police officer to whom it has been issued might think proper to search, was not a legal warrant within the provisions of the Act. 35. A. 1.

Under S. 13 of the Act, a Magistrate is not authorised to order the confiscation of money gained by an accused person in the gambling but only the instruments of gaming may be seized. 41 A. 366; 16 A. L. J. 428; 40 A 617; 19 Cr. L. J. 700; 21 Cr. L. J. 42; 46 I. C. 156; 54 I. C. 250.

Under S. 8 of the Act, money found on the persons of gamblers is not liable to confiscation; that section merely justifies the seizing and forfeiting of money found in a common gaming house at the time the house is raided. 63 I. C. 408; 22 Cr. L. J. 648, 41 M. 644; 34 M. L. J. 253. 44 I. C. 205; 19 Cr. L. J. 301.

When there was no evidence that the house where the gaming was carried on was a common gaming house, and that there was no legal evidence to support the conviction, the appellate court ought not to send back the case for retrial and ought to have acquitted the accused in the absence of evidence to show that the house where they were found gaming was a common gaming house. 28 M. L. J. 373; 17 Cr. L. J. 193; 34 I. C. 305.

Seditious Meeting Act X of 1911.

Scope.

The Act is only in force in any area, if that area has been notified by the Local Government to be a proclaimed area. Such notifications only remain in force for six months, but may be renewed. Ss. 1 and 2.

No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in the proclaimed area—

(i) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police at least three days previously; or

(ii) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police (section 4).

The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, by order in writing, depute one or more police-officers, not being below the rank of head constable, or other persons, to attend any such meeting and take a report of the proceedings (section 4.)

Any District Magistrate or the Commissioner of Police may prohibit any public meeting in any proclaimed area, if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity (section 5).

Any public meeting prohibited under section 5 shall be deemed to be an unlawful assembly (section 6).

Whoever in a proclaimed area, in a public place or place of public resort, otherwise than at a meeting held in accordance with the provisions of section 4 of the Act, or with the written permission of the District Magistrate or the Commissioner of Police; delivers any lecture or speech on any subject likely to cause disturbance or public excitement to persons then present may be arrested without warrant (section 7).

For Power to disperse assemblies See Vol. 1.

Definition of public meeting.

"Public meeting" is said to mean a meeting which is open to the public or any class or portion of the public. It is added that a meeting may be a public meeting notwithstanding that it is held in a private place, or that admission to it may have been restricted by ticket or otherwise. S. 3.

Exceptions.

Nothing in the Act applies to a public meeting held under any statutory or other express legal authority, to public meetings convened by a Sheriff, or to any public meetings exempted for the purpose by the Local Government.

Stage Carriages Act XVI of 1861.

Definition of Stage carriage.

The act extends to all British India.

Every carriage drawn by one or more horses for the purpose of conveying passengers for hire to or from any place in British India is deemed to be "a stage carriage".

No carriage may be used as a stage carriage unless licensed by a Magistrate, or by a Commissioner of Police.

Everything which in this Act applies to horses, also applies to all other animals employed in drawing stage carriages.

The number of the license of the carriage and all other particulars of the license must be distinctly painted in the English Language and character upon a conspicuous part of it.

Seizure of carriage and horses in certain cases.

Any Police officer within two miles of the office of a Magistrate may seize any carriage and the horses harnessed to it if the provisions noted above are neglected, and must take both carriage and horses forthwith to the Magistrate.

In any other case the offence must be dealt with under S. 57 Cr. P. C.

The term "Magistrate" in the Act shall include all Magistrates and other persons exercising the powers of a Magistrate. S. 21.

Police officer's power under the Act.

In Madras Presidency all Police officers not below the rank of a Head Constable are authorised within their respective jurisdictions to inspect stage carriages and the animals employed in drawing them. (Ft. St. George Gazette dated 17-3-1914).

The Police (Incitement to Disaffection) Act, XXII of 1922.

An Act to provide a penalty for spreading disaffection among the police and for kindred offences.

WHEREAS it is expedient to penalize the spreading of disaffection among the police and other kindred offences; it is hereby enacted as follows :—

Short title, extent and Commencement.

1. (1) This Act may be called the Police (Incitement to Disaffection) Act 1922.

Definition.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Penalty for causing disaffection, etc.

(3) It shall come into force in any province or part of a province on such date as Local Government may, by notification in the local official Gazette, direct.

2. In this Act, the expression "member of a police-force" means any person appointed or enrolled for the performance of police duties under any enactment specified in the schedule.

3. Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards His Majesty or the Government established by law in British India amongst the members of a police-force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of a police-force to withhold his services or to commit a breach of discipline shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation :—Expressions of disapprobation of the measure of the Government with a view to obtain their alteration by lawful means, or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.

Saving of acts done by Police association and other person for certain purposes.

4. Nothing shall be deemed to be an offence under this Act which is done in good faith—

(a) for the purpose of promoting the welfare or interests of any member of a police-force by inducing him to withhold his services in any manner authorised by law ; or

(b) by or on behalf of any association formed for the purpose of furthering the interests of members of a police-force as such, where the association has been authorized or recognized by the Government and the act done under any rules or articles of the association which have been approved by the Government.

Sanction to trials of offences by subordinate Courts.

5. No Court shall proceed with the trial of any offence under this Act except with the previous sanction, or on the complaint, of the District Magistrate or, in the case of a Presidency town or the town of Rangoon, of the Commissioner of Police.

Trial of cases.

6(1). No Court inferior to that of a Presidency Magistrate or Magistrate of the first-class shall try any offence under this Act.

(2) Not withstanding anything contained in Chapter XXII of the Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily.

Every Special Police officer called out shall have the same powers, privileges and protection, shall be liable to perform the same duties, and shall be amenable to the same authority as the ordinary officers of Police. The duties of special Police officers will as a rule be confined to the preservation of order within their own localities but any Police duties may be assigned to them. The requirements of discipline in their case should usually be light. Any conditions of the office which might be regarded by the local residents as offensive and unnecessarily irksome should not be insisted on. Physical drill, for instance, would in most cases be inappropriate and the saluting of petty officers unnecessary while parades or attendance at the Police station, when necessary, should be so regulated as not to cause hardship. The periods of duty shall not

be long and reliefs shall be frequent. The work of special Police officers shall be supervised and checked and absence from duty noted, but this supervision shall, as far as possible, be entrusted to picked Special Police officers who should be formally placed in charge of the others. When it is necessary to stiffen or support parties of special Police officers by regular Police, they shall be handled as far as possible as separate bodies and the duty of using any necessary organized force shall as far as possible be performed by regular Police.

Refusal to serve and penalty.

The failure of a person who was appointed special constable, to attend at the police station to receive his belt and take charge of his appointment as a special constable amounts to a refusal to serve within the meaning of S. 19 of the Act. 19 Cr. L. J. 91; 43 I. C. 251. A Magistrate only and not a Sessions judge has power to try cases under S. 29 of the Act. 1 W. R. 5; 9 W. R. Cr. 33. A Deputy Magistrate, exercising the full powers of a Magistrate, has jurisdiction, under S. 29 of the Act to fine Police officers for violation of duty. 4 W. R. 2. If any special Police officer, without sufficient excuse, neglects, or refuses to serve as such or to obey such lawful orders or directions as may be given to him for the performance of his duties, he is liable on conviction to a fine not exceeding fifty rupees under the Madras District Police and City police Acts. G. Os. Nos., 502. Judicial, dated 16th August 1921 and 701, judicial, dated 6th ostober 1921.

Application of different sections considered.

Before a police officer can be convicted of an offence under S. 29 of the Act, it must be proved that he is guilty, not of mere neglect but of deliberate and intentional violation of duty. 17 W. R. 34; 8 B. L. R. Ap. 60. Police officers charged with culpable neglect of duty whereby a prisoner escapes from custody are not punishable under S. 44. They should be dealt with under the provisions of I. P. C. S. C. proceedings dated 1st August 1861. Overstaying leave without permission, does not constitute an offence under S. 29. 6 C. 625; 6 A. 495, 8 C. L. R. 56. But in 29 M. 192 it was held to be an offence.

The accused, a Police constable, did not return to duty on the expiry of casual leave for which he was prosecuted and fined. During the pendency of the trial he was suspended. After his trial he was reinstated and asked to join, which he did not do. He was tried and sentenced to imprisonment. Held, that they were distinct offences and the accused was rightly convicted. 42 A. 22; 20 Cr. L. J. 575; 52 I. C. 63. A Police officer was convicted under S. 29 of the Act, for overstaying his leave. His defence was that he was detained by important private business of his own and therefore could not join in time. Held, that in the circumstances of the case it could not be said that the petitioner failed without reasonable cause to report himself to duty on the expiration of his leave and the conviction should be set aside. 25 C. W. N. 408, 23 Cr. L. J. 227; 66 I. C. 67. A Police officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace and to make entry thereof in the diary, and the omission to give such information is an offence under S. 177 I. P. C. 21 W. R. Cr. 30. A Police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under S. 29 in case proof is insufficient to bring a case under S. 218 I. P. C. 15 W. R. 17. Police officer making a false entry in the special diary cannot be convicted of fabricating false evidence as the diary is not admissible in evidence. 6 A. 42; 5 M. H. C. R. 373 referred to. Mere rashness or negligence on the part of a Police officer before ordering the search for a man's house for stolen property does not constitute an offence amounting to violation of duty under S. 29 of the Act. The violation there intended must be wilful intentional violation of some clear duty or other. 19 W. R. 7. A station house officer being authorised by law to depute his subordinate to proceed to the place where crime is reported, to have been committed, can not be convicted under S. 29 for wilful violation of duty, if he fails to proceed himself to such spot. 1 A. H. C. Cr. 1. Detention by Police officer for over 24 hrs., of a prisoner, is punishable under S. 29 as a wilful

breach of the rule laid down by S. 167 Cr. P. C., unless the detention is not continuous. 1 W. R. Cr. 5; 19 W. R. Cr. 36. The conduct of a Police officer in carrying on and conducting a shop comes within the purview of S. 10 of the Act, and can be convicted under S. 168 I. P. C. The words "any employment or office whatever," appearing in that section are wide enough to cover the case of a Police officer who engages in trade. 19 Cr. L. J. 152; 42 I. C. 440. It is not theft if a Police officer deserts with his uniform, even though he appropriates it to his own use, but he is liable to be punished under S. 44 of the Act. High court proceedings dated 30th November 1864. Where a Police constable failed to attend an extra drill imposed upon him by the District Superintendent or to comply with the order to cut down the jungle in the vicinity of Police lines, held such omission does not amount to an offence under S. 29, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. 17 W. R. Cr. 34; 19 W. R. Cr. 7. Police officers accused of taking illegal gratification are entitled to use the statements of witnesses made at departmental enquiry under S. 153 I. E. A., for cross-examining those witnesses. 16 C. W. N. 431; 2 B. L. R. 329 followed. Under the Police code a Police officer is authorized to take thumb-impression of a *Surveille* when he is at home. But the *Surveille* is not under any legal obligation to give such thumb-impression. But when the Police officer requires him to give the thumb-impression he has no right of private defence against him. 6 C. W. N. 342.

Where a Magistrate convicted a person for an offence under Cl. 6 (1) of S. 34 of the Act for quarrelling in the bazaar and awarded sentences of simple imprisonment, and the convictions and sentences were affirmed on appeal, the chief court refused to interfere as the decision was not contrary to law, for the words 'riotous' is sufficiently wide to cover the case of a person who creates a row in a thoroughfare. 17 Cr. L. J. 273; 34 I. C. 998.

Prosecution for offences under the Act.

The period within which offences against the provisions of the Act is to be prosecuted is three months. S. 42 of the Act. It is illegal to institute criminal prosecutions against Police officers under the penal sections of the Police Act for minor breaches of discipline or matters which may be treated departmentally. Such cases should be dealt with under S. 10 of the Act. P. O. 293 A. S. 42 of the act is no bar to a trial of a Police officer or illegal arrest where the complaint is made against him within the period of limitation prescribed by that section. 23 Cr. L. J. 81; 65 I. C. 433.

Prosecution for offences when not on duty.

A Police constable is liable to be punished under the Penal Code, and not under the Police Act, if he commits any offence when not on duty. 96 P. R. 1886 Cr. A Police officer under suspension cannot be convicted, under S. 29 of the Act for withdrawing from the duties of his office without permission. 17 W. R. 12; 8 B. L. R. Ap. 58; 10 A. 459.

Who is competent to try offences.

A Magistrate is competent to direct an enquiry to be made by a Police officer into an offence punishable under a Local Act such as the police Act. 14 W. R. Cr. 41. A District Magistrate is not precluded under S. 556 Cr. P. C., on account of his being the head of the Police in the district, from trying a person under the Act. 22 A. 340. Ref:—24 M. 238; 2 Weir. 238; 1906 A. W. N, 110. The Local Government may confer on any Bench Magistrate invested with the powers of a Magistrate of the second or third class powers to try summarily the conservancy clauses of the Act which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine. S. 261 Cr. P. C.

Convictions under the act and appeal.

Convictions under the Act are appealable like other convictions. 5 W. R. Cr. 22.

The Madras Revenue Recovery Act.
Act II of 1864.

Duties of the Police.

Under S. 20 of the Act a Police officer shall be deputed to be present at the forcing open of a dwelling house or zanana,

When resistance an offence.

Where it is proved that the distraining officer had the demand in his possession at the time of distraint though he did not show it to the defaulter before making the distraint, and the accused offered resistance to the distrainer, held, that the distress was not illegal on that ground and that the resistance constituted an offence. 1917 M. W. N. 413; 5 L. W. 537; 18 Cr. L. J. 623; 39 I. C. 990. Ref:—29 M. L. J. 60. S. 8 of the Act does not contain any provision requiring, in cases where the defaulter is absent at the time of distraining, that the demand should be delivered to the defaulter before the distress, the distraint without serving the demand on the defaulter is not illegal and resistance to such distraint is punishable. 29 M. L. J. 60, 16 Cr. L. J. 607, 30 I. C. 159. Certain standing crop was distrained for arrears of the land-revenue. The accused, the real owners of the land, carried away the crop and was charged with theft. The Deputy Magistrate acquitted the accused on the ground that no demand was served upon the man that no list of distrained property was furnished to them but were given to another person in whose name the pattas stood. Held, that the Deputy Magistrate was wrong in acquitting the accused on the ground mentioned. The case was directed to be retried on the point whether the accused was in fact aware of the distraint, and with such knowledge dishonestly removed the crop. 16 M. 364, 1 Weir. 422, 13 M. L. J. 178, 30, I. C. 159. Foll 29 M. L. J. 60, 16 Cr. L. J. 60. It has been held that theft is committed by the owner of a standing crop attached under the Act, removing it. The mode and effect of attachment as regards possession was not considered as in case of attachment by a civil court. 1 Weir. 423, 420; 8 A. L. J. 656. Where a judgement—debtor, whose standing crops were attached by a civil court harvested them while attachment was in force, it was held that he could not be convicted of theft but of offences under S. 424 and 403 I. P. C. 22 M. 151; 1 Weir. 421; 16 M. 364. The Collector cannot review his own order under the provisions of this Act. 33 M. 65, 6 M. L. T. 177, 19 M. L. J. 725, 3 I. C. 463. Dist. 32 I. C. 527. Foll. 41 M. 955.

The Press and Registration of Books Act XXV of 1867.

Duties of the Police.

The Police should detect and report to the District Magistrate all evasions of the provisions of sections 3, 4, 5 or 9 of the Act. It will also be their duty to examine the extracts received from the District Magistrate from the quarterly lists of books and pamphlets furnished to him by printers and to report to him any omission that may come to their notice.

On the prosecution of the editor of a newspaper for defamation under S. 500 I. P. C., by publishing a libel in his paper, an attested copy of a declaration made by the editor under S. 5 of the Act to the effect that he was a printer and publisher of the newspaper was produced in evidence by the complainant. The editor having been convicted by the Magistrate the Sessions Court on appeal quashed the conviction, on the ground that there was no evidence that the editor was the writer of the libel, or permitted its publication. Held that, in the absence of proof to the contrary, the declaration was primaface proof of publication by the editor. Held also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. 9 M. 387.

A newspaper was printed and published, bearing the following words: "Printed and published at Cochin for the Malabar Economic Company at the Company's Goshree Vilasam Press". Held that the words did not satisfy the requirements of the Act. 16 M. 443. See pages 21, 22 and 23 of Vol. 11.

The writer of an article may be guilty of sedition no matter how guardedly he attempts to conceal his real object, but the registered printer and publisher cannot be punished if the concealed object is not established by the evidence on the record. 38 C. 227, 253.

There is no presumption as regards a printed book that the person whose name appears as the author is the author thereof. The statement of the Manager of a press presumably made under S. 18 of the Press and Registration of Book Act, that, a certain person is the author of a book is no evidence of the fact, and for the purposes of a proceeding under S. 108 Cr. P. C., the fact of authorship must be proved alike any other fact. By printing book the printer abets the dissemination of the book within the meaning of S. 108 Cr. P. C. 24 Cr. L. J. 150, 67 I. C. 294. See also 25 B. L. R. 97.

The Indian Press Act I of 1910.

Power and duties of the Police.

The powers and duties of the Police under the Act are as follows :—

Any police officer, not below the rank of a Sub-Inspector, may, on the issue of a warrant by a magistrate empowering him to do so, seize and detain any printing press or any copies of any newspaper, book or other document, which has been declared to be forfeited to His Majesty under the Act, and enter upon and search for such property in any premises—

(i) Where any such property may be or may be reasonably suspected to be, or

(ii) Where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonalby suspected to be so kept [section 7 (1)].

2. When the Local Government have, by notification in the local official Gazette, declared any newspaper, book or other document, wherever printed, to be forfeited to His Majesty, any police officer may seize the same wherever found and any magistrate may, by warrant, authorize any police officer, not below the rank of Sub-Inspector, to enter upon and search for same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be [section 12 (1)].

3. Notices under the Act should be served in the manner provided for the service of summons in the Criminal Procedure Code (section 25).

4. Whenever the Police have information that a newspaper, book or pamphlet of the nature described in section 4 (1) of the Act is likely to be posted, they should give immediate intimation of the same to the local post office concerned.

Breaches of this Act are not cognizable. Searches may be made for books, etc., only by officers of and above the rank of Sub-Inspector acting under a warrant from a District Magistrate (S. 7 and 12). The provisions of the Criminal Procedure Code apply to such searches.

Courts should be careful to draw no inference of guilt against the declarant from the mere fact of declaration but must consider the surrounding circumstances and probabilities to enable them to arrive at a conclusion whether the declarant had a hand in the printing and publishing, so as to bring him within the operation of the particular section of the I. P. C., under which he might be charged. 35 B. 55 ; 12 B. L. R. 675 ; 7 I. C. 937 ; 11 Cr. L. J. 546. The registered printer of a paper, so long as he continues such printer, can not escape from criminal liability for publication therin, of seditious articles, by the plea that he was temporarily absent from the station when the article was printed, or that he was ignorant of the contents thereof or that he had no intention of committing any offence. 2 Cr. L. J. 31; 69 P. L. R. 1905.

Translations are not copies and a person by translating a book does not infringe the author's copyright. 19 B. 557 ; 14 B. 586. Foll 57 I. C. 592, 44 B. 720.

The Act does not require a new declaration, in cases where a press, as to which the printer, has made the declaration is changed to another locality within the same Local jurisdiction as the former place. 9 P. R. 1889 Cr. To prove the seditious character of an article in a newspaper, proof of other seditious articles appearing in the same newspaper is admissible. 32 M. 388 ; 5 M. L. T. 415 ; 2 I. C. 193 ; 2 Cr. L. J. 506.

The terms 'Government' established by law in British India used in S. 4(1) of the Act, include Local Government as well as the Government of India. 18 I. C. 374; 4 Cr. L. R. 281; 24 I. C. 581; 28 P. R. 1914 Cr; 15 Cr. L. J. 490; The order under S. 3(1) of the Act requires deposit of security is not rivisable by the High Court, as the action of the Magistrate is administrative, not judicial and he is not bound strictly speaking to hear the person affected by his order. 5 L. W. 1; 19 Cr. L. J. 740; 23 C. W. N. 986; 21 B. L. R. 867; 26 M. L. T. 408; 39 M. 1085; 43 M. 146; 46 I. C. 516; 52 I. C. 209. Under S. 3(1) the Magistrate has the fullest discretion both as regards requiring security and determining the amount and this discretion is to be exercised not once for all but from time to time. The proviso to S. 3(1) gives additional power to the Magistrate over and above those conferred by the first para. "Any order" in S. 3(1) includes also an order dispensing with security. Proceedings under S. 24 includes proceedings under S. 3(1). 4 L. W. 625; 2 M. W. N. 497; 32 M. L. J. 151; 21 M. L. T. 190; 18 Cr. L. J. 239; 37 I. C. 607.

An order under S. (2) could be passed only by a Local Government. As it did not appear on what ground the exemption from depositing security had been originally granted and on what ground the District Magistrate required security to be deposited at a later stage, the order of the District Magistrate was bad and liable to be set aside by the High Court under S. 17 of the Government of India Act, 1915. 19 Cr. L. J. 355; 44 I. C. 579.

The word 'disaffection' includes disloyalty and all feelings of enmity and the duty of the High Court under S. 19 is limited to a consideration of the question whether the order of forfeiture is justified by the words and tendencies of the article. The intentions or motives of the writer are irrelevant the possible result of the article are to be considered. The time when the statement is made and the circumstances should also be considered in coming to the conclusion. 16 Cr. L. J. 274; 28 I. C. 322.

All forms of ill-will towards the Government including hatred, contempt, enmity, dislike, hostility are included in the words 'disaffection'. The words 'hatred and contempt' mean something more than disapproval or dislike.

39 M. 1085, 2 M. W. N. 385, 5 L. W. 1, 18 Cr. L. J. 157; 21 M. L. T. 124; 37 I. C. 525. Foll 47 C. 190, 54 I. C. 578, See page 22 Vol. 11.

In a notice issued under S. 4(1) the particular passage objected to, in an article need not be specified. The words complained of need not be stated verbatim in the notice. 16 Cr. L. J. 555; 29 I. C. 827. The offence of keeping printing press without making the declaration, prescribed by the Act, is not triable summarily. 24 P. Reg. Cr. J. No. 9 of 1889.

An order passed under S. 8 is not subject to revision by the High Court, though the section under which the order was issued was not mentioned. 17 C. W. N. 1245, 15 Cr. L. J. 145, 22 I. C. 721. S. 5 of the limitation Act has no application under S. 17 of the press Act. The words "within two months from the date of such order" should be counted strictly and literally and cannot be understood to mean "within two months from the date of receipt of such order". 15 Cr. L. J. 222, 22 I. C. 1006 (S. B).

The Cattle Trespass Act I of 1872.

Power of Magistrates.

A Magistrate authorised under S. 190 Cr. P. C., to take cognizance of offences upon receiving complaints can take cognizance of an offence under S. 20 of the Act, though there is no special authorisation in that behalf. 44 B. 42. 21 B. L. R. 1084, 54 I. C. 495. Though a complaint under S. 20 of the Act must be entertained either by the Dt. Magistrate or by a Magistrate specially authorized, such Magistrate has no power under S. 192(1) Cr. P. C., to transfer the cases after taking cognizance of it, to any Subordinate Magistrate as contemplated by the Code. 34 C. 926.

Power and duties of Police.

The following are the powers and duties of :—

A Station-house officer :—To issue and cause to be proclaimed by beat of drum in the village and at the market place nearest the place of seizure the notice required by law regarding impounded cattle not claimed within seven days, and to sell them if they remain unclaimed for a further period of seven days, unless some other officer is appointed by the District Magistrate. S. 14. Such notice shall state, (i) the number and description of the cattle, (ii) the place where they were seized, (iii) the place where they were impounded.

All Police officers :—To take charge of stray cattle and place them in the pound if they think that such animals will be stolen, if not taken care of; also to seize and place in the pound any animals found doing damage to roads, plantations, canals, etc., S. 11. (ii) To aid the cultivator or occupier of land in preventing resistance to the seizure of cattle found trespassing on his land and in preventing the rescue of cattle so seized from the seizers. S. 10.

Note :—In this act the term 'Officer of the Police' includes village watchman.

No Police Officer nor pound keeper shall directly or indirectly purchase any cattle at a sale under the Act. S. 19.

Where a Police Officer was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under S. 19 taken with S. 169 I. P. C., the accused could not be convicted under S. 406 I. P. C. 6 W. R. 52.

Whenever cattle have to be sent to the Police for sale by public auction, under provisions of the Act, the pound-keeper shall send a report to the station-house officer in Form 32 (Special Funds Code) retaining the counterfoil, he shall also keep the cattle until they are actually required for sale. When the cattle are sold or returned to the owner, the station-house offier shall return the report to the pound-keeper with an account in Form 33 (Special Funds Code) together with the

amount realised, after deducting the sum paid to the owner or agent. This report, together with the counterfoil to which it should be pasted on receipt back from the station-house officer should be sent to the Tahsildar with the monthly remittance and extract from Register No. 31 (Special Funds Code). The station-house officer shall keep a register in Form 34 (Special Funds Code), which should be filled in before the report in Form 32 is returned to the pound-keeper. An extract from the register in Form 33 (Special Funds Code) shall be sent to the Tahsildar by the station-house officer at the close of the month. P. O. 4 7.

By S. 4 of Cr. P. C., the word offence includes an act in respect of which a complaint may be made under S. 20 of the Act and person against whom an order under S. 22 of Act is made is a person convicted on a trial and is entitled to appeal under S. 407 Cr. P. C. 29 M. 517 contra 19 M. 238, 10 B. 230. A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence. 7 B. H. C. R. 55. That illegal seizure of cattle mentioned in S. 20 of the Act is an offence. 34 C. 926. A Magistrate is empowered to award compensation under S. 250 Cr. P. C. in respect of cases of illegal seizure of cattle in as much as they are offences within the meaning of S. 4 Cl. (O) Cr. P. C., and complaints can be made in respect of them. 29 C. 517.

A lessee is the occupier of the land under S. 10 and consequently entitled to seize the cattle or cause it to be seized 23 C. W. N. 381. See also 17 Cr. L. J. 63, 32 I. C. 655. Cattle can be seized and impounded only when they are actually trespassing. 1 Weir. 709. The words "or found straying thereon" mentioned in S. 11 of the Act having been also applied to forest by S. 69 Forest Act, the seizure by a Forest Officer of cattle found straying in a reserved forest is legal, even though no damage has actually been done. 22 B. 933. Cattle are not liable to seizure by the officers of the P. W. D., unless they were trespassing on public property in charge of the officers of

the Department. 24 M. 318. The impounding of the cattle by a watchman who has got general instruction from the cultivator or occupier is authorised under S. 10 while trespassing. 16 Cr. L. J. 772; 31 I. C. 372.

The accused having been convicted for having forcibly rescued their cattle seized by the complainant with a view to take them to the pound, as they were causing damage to the earth work newly thrown on, an embankment of the complainant's master and they have been convicted both under S. 143 I. P. C., as they were five in number and also under S. 24 of the Act. Held that the separate punishment under the penal code as well as under the Act is illegal. S. 71 I. P. C., only provides separate punishment for an offence against the same law and not under different laws. 19 Cr. L. J. 157; 43 I. C. 445. A person driving cattle impounded by shouts and cries is guilty of the offence of rescuing cattle under S. 24 of the Act. Inducing an animal to move may amount to using "force" within S. 349, ill, (h) I. P. C. 32 M. L. T. 365. For a conviction under S. 24 of the Act it is not enough that the accused removed cattle from the pound, the prosecution must further prove as to whether the cattle was lawfully seized while trespassing upon or doing damage to the crops of the owner of the field, and there must be a finding of the court, upon the point, as to whether the cattle was lawfully seized while trespassing upon or doing damage to the crops of the owner of the field. 1 Patna. L. W. 176, 57 I. C. 464.

Certain cattle escaped from a pound, the next day they were grazing in charge of their owner (the accused). The Police patel attempting to seize them again, the accused resisted. Held that, to resist the seizure of cattle under the circumstances, was not an offence punishable under S. 24 of the Act. Rat. Un. Cr. 294.

Where a person removed cattle from a cattle pound and returned them to their true owner, held that the accused was guilty under S. 24 of the Act but not of theft in a building. 1 Weir. 716. To render a person liable under S. 425 I. P. C.,

the accused must so do the act, knowing that he is likely to cause damage—mere neglect to keep the cattle from straying is not sufficient. 14 W. R. 31; 9 B. 173. Where a seizure of the cattle was made not with an intention to take them to the pound but for the purpose of coercing their owners to pay arrears of rent, the seizure is clearly illegal and amounts to an attempt at theft. 18 Cr. L. J. 849; 41 I. C. 817.

Rescue of cattle not seized in accordance with the Act is not illegal. 20 Cr. L. J. 398; 50 I. C. 1006; 23 C. W. N. 387. If the cattle were not "liable to be seized" their rescue is no offence and the fact that rescuer had a special remedy under S. 20, does not affect the matter. 24 M. 318.

Under S. 26 in case of animals other than pigs causing damage, intention to cause damage or knowledge that damage is likely to be caused, must be proved. 1 Weir. 617.

A suit for compensation for wrongful seizure of cattle will lie in a civil court, the act is no bar to such a suit. 15 W. R. 279; 2 C. L. R. 344; 44 I. C. 237. dissented from 16 C. 159. There is no provision in the Act for awarding imprisionment in default of payment of fine. 9 M. 1870, 19 M. 238, 22 C. 139. False entry in the accounts by a Pound Keeper was held to be punishable not under S. 27, but under Ss 409 and 511 I. P. C., Cr. Rul. 2 of 1898. The maintenance of Private cattle Pounds is incompatible with the Provisions of C. T. A. 39 C. 615.

The European Vagrancy Act IX of 1874.

A "vagrant" means a person of European extraction found asking for alms or wandering about, without any employment or visible means of subsistence. "Person of Europeon extraction" is not defined, but said to include. (a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape colony. (b) the sons and grandsons of such persons, but not "persons commonly called Eurasians or East Indians."

The powers and duties of any Police officer under this Act are—

(1) To require a vagrant to accompany him to, and to appear before, the nearest Presidency Magistrate, if in the Presidency Town, or the nearest first-class Magistrate (who is is a justice of the Peace) if outside the Presidency Town (section 4).

(2) Under the orders of such Magistrate to escort a vagrant to the Government workhouse (section 5) or to a place of employment (section 6) or to keep him in charge when seeking employment for him (section 7).

(3) To arrest without warrant any person refusing or failing to accompany a Police-officer to, or to appear before, such duly constituted Magistrate for the purpose of preliminary inquiry when required to do so under section 4 (section 19). See also page 56 Vol. 1.

The following rules are extracted from a Notification of Government, dated 20th July 1871:—

(1) When a Police-officer considers it necessary to proceed against a vagrant under section 4, he will, within the limits of the town of Madras, send for the Inspector or the European Sub-Inspector or Sergeant of his division, carefully, watching the vagrant meanwhile. Outside the limits of that town, the Police-officer will watch the vagrant as above and will send intimation to a European Inspector or Sergeant, if available and at hand. If no European Police-officer be available, the Police-officer will send intimation to the Inspector of his Circle, or, in the absence of the Inspector, to the nearest station-house officer. Vagrants who attempt to escape may be arrested at once.

(2) On the arrival of the European or other superior Police officer, named in the above paragraph, the vagrant, if he alleges that he holds a certificate under section 9, will be required to produce the same. If he has no certificate he will

be required to appear before the nearest Magistrate or Justice of the Peace, or District Superintendent of Police, or other officer invested with powers under section 10 of the Act.

(3) If an offence under section 23 is committed by a vagrant in the view of a Police officer, or if a complaint is made that such offence has been or is being committed, the Police shall act as laid down in paragraph (1).

(4) In the event of unavoidable delay in putting the case before a Magistrate or other officer invested with powers under section 10, reliable bail may be accepted for the vagrant's appearance.

(5) Vagrants forwarded to a workhouse or other place under sections 5, 6, 7 and 24 of the Act shall be escorted by a European Police officer, whenever this is possible.

(6) No vagrant under escort of the Police shall be permitted to enter any arrack shop or other place for the sale of intoxicating liquors, nor shall any intoxicating liquor be supplied to a vagrant *en route*.

(7) Vagrants *en route* will ordinarily be lodged in police station-houses; but will not be locked up unless this measure is necessary.

(8) The utmost patience and forbearance will be exercised by all Police officers in dealing with vagrants under the provisions of the Act. They will take no notice of abusive language. Police officers will be specially mindful to take such reasonable care of vagrants as their physical condition (often weak and sickly), the season of the year and other circumstances many render advisable.

(1) When an agreement has been entered into by a vagrant under section 17, he shall be forwarded, along with the original agreement, in the charge of a Police officer to the officer at the port of embarkation, who is empowered by the Local Government to receive vagrants; and thereafter, and until his embarkation, he shall remain in the custody of that

officer, or of such other officer as the Local Government empowers in this behalf. He shall during such time be entitled to subsistence allowance at 8 annas per diem.

Note.—The 'subsistence allowance' of a vagrant shall not ordinarily be made over to him but shall be kept and disbursed on his account by the police or other officer in whose custody he is for the time being.

(2) Subject to the provisions of the rules made by the Governor-General in Council under section 33 of the Act, Police officers may advance subsistence and travelling allowances, when necessary under section 8. All sums thus expended, as also all sums advanced by a full power Justice of the Peace acting under Part II of the act and by District Superintendents of Police acting under section 10, shall be recovered from the officer in charge of the Treasury of the district on bills submitted by such Justices and Superintendents of Police, respectively.

(3) Expenses incurred under part IV of the Act at the place of deportation shall be defrayed by the officer appointed to arrange for the deportation of vagrants, and shall be recovered on a contingent bill to be submitted by such officer to the Accountant General.

(1) District Superintendents of Police have been invested by Government under a notification, dated 9th March 1871, with the jurisdiction and powers conferred by part II of the Act on a Justice of the Peace.

(2) Under a notification, dated 31st May 1870, the Government have directed that prosecutions under the Act should ordinarily be conducted by Inspectors of Police, but in their absence by station-house officers.

Subordinate Police officers shall report to the Superintendent any complaints of unruly behaviour of, or annoyance caused by, European or Eurasian vagrants and the Superintendent will use his judgment as to informing the Criminal Investigation Department, with a view to action being

taken against the vagrant under the Act, if such complaints become frequent. P. O. 519. Any European British Subject who has been convicted under S. 22 or 23, shall so long as he remains in India, lose his privilages as a European British Subject. S. 30.

S. 111 Cr. P. C. Is repealed vide S. 8 of the Criminal Law Amended Act. XII of 1923. The Provisions of Ss. 109 and 110 Cr. P. C., now apply to European British Subject also.

Whenever any person being a European or American is convicted of an offence punishable under the Penal Code with transportation, the court shall sentence the offender to penal servitute, instead of transportation. S. 56 I. P. C. Punishment of "Penal servitute" is applicable only to European and Americans. 19 M. 483. 15 Cr. L. J. 192, 22 I. C. 768.

N. B:—The attention of all Magistrate and Police officers is drawn to G. O. No. 542, Judicial, dated 30th March 1912, in which they were requested to ensure that indigent persons sent to the workhouse, Bombay, are actually of 'European extraction' as defined in section 3 of the European Vagrancy Act IX of 1874. Madras Police Gazette No. 35 dated 21 September 1918.

For Criminal Proceedings against Europeans and Americans see Part I.

SCHEDULE A.

Limitation for the institution of Criminal Proceedings.

Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to a criminal case.

All offences under the Penal Code, all offences including such as are compoundable without the permission of the court, and even mere attempts, may be prosecuted after any

lapse of time except proceedings under Special and Local Laws which cannot be instituted after any lapse of time as in the case of offences under Indian Penal Code. They prescribe periods within which offences against their provisions must be prosecuted.

The following are the period within which offences under Special and Local Laws must be prosecuted :—

I. Parliamentary Statutes.

Period of limitation.	Title.	Subject.
Five years ...	21 Geo. III, C. 70 S. 7	Prosecution of the Governor General etc.,
Three years ...	24 Geo. III, C. 25 S. 82.	Prosecution of British subjects guilty of offences in India.
One year ...	44 & 45 Vic. C. 58, S. 170.	Prosecution under the the Army Act 1881.

II. Acts of the Governor-General of India in Council.

Period of Limitation.	Year.	Act.	Section	Title of the Act.
Three years...	1889	IV	15	Merchandise Marks.
Two years ...	1872	XV	76	Marriage of Christians.
One year ...	1847	XX	16	Copy right.
Do. ...	1857	XIII	26	Opium, Bengal.
(Do. after discovery by Prosecutor.	1889	IV	15	Merchandise Marks.
Six months ...	1879	VI	9	Preservation of Elephants.
Do.	1882	XII	11	Salt.
Do.	1882	XVIII	16	Burma Steam Boilers.
Do.	1886	V	13	Mirzapur stone Mahal.
Do.	1896	XII	57	Excise.

Three months	1850	XIX	18	Binding apprentices.
Do.	1859	XXIV	53	Police, Madras.
Do.	1861	V	42	Police.
Do.	1869	XX	26	Volunteers.
Do.	1878	VIII	198	See Customs.
Do.	1878	XI	33	Arms.
Do.	1879	XX	12	Glanders and Farcy.
Do.	1880	II	19	Burma District Cesses and Rural Police.
Do.	1882	XV	97	Presidency Small Cause Courts.
Do.	1890	XI	9	Cruelty to animals.
One month ...	1850	XIX	18	Binding Apprentices.

III. Acts of the Governor of Fort St. George in Council.

Six months...	1889	IV	42	Salt.
Do.	1873	I	9	Wild Elephants.
Do.	1886	I	72	Excise.
Do.	„	II	87	Madras Harbour.
Three months	1884	I	446	Madras City Municipality.
Do.	1888	III	81	Madras City Police.
Ten days ...	1866	II	16	Cattle disease.

IV. Acts of the Governor of Bombay in Council.

Six months ...	1879	VI	87	Port Trust.
Do.	1888	III	514	Bombay Municipality.
Do.	1890	II	61	Salt.
Do.	„	IV	80	District Police.
Do.	1891	II	33	Steam-Boilers.
Four months	1878	V	67	Excise.
Three months	1867	VII	42	District Police.
Do.	1873	VI	82	District Municipalities.
Do.	1888	III	514	Bombay Municipality.
Eight days ...	1867	VIII	41	Village Police.

V. Acts of the Lieutenant-Governor of Bengal in Council.

Six months...	1864	VII	37	Salt.
Do.	1878	VII	72	Excise.
Do.	1879	III	12	Steam-Boilers.
Three months	1866	IV	20	Calcutta Police.
Do.	1884	III	353	District Municipalities.
Do.	1888	II	419	Calcutta Municipality.
Do.	1890	III	142	Calcutta Port.
Do.	1891	II	56	Calcutta Hackney carriages.
Two months...	1880	VIII	12	Contagious Disease, animals.

SCHEDULE B.

Offences against the following sections of the Indian Penal Code are all cognizable, and are bailable or non-bailable according as they are grouped below :—

(1) Bailable :—Ss. 135, 136, 138, 140, 143, 144, 145, 147, 148, 151, 152, 153, 157, 158, 159, 170, 171, 212, 213, 215, 216, 216-A, 224, 225, (when there is resistance or obstruction to the lawful apprehension of another person or rescuing him from lawful custody), 225-A, (in cases of intentional omission or sufference; and in case of negligence omission or sufference), 225-B, 262, 263, 263-A, 269, 270, 277, 279, 280, 281, 282, 283, 285, 286, 289, 291, 292, 293, 294, 295, 296, 297, 304-A, 308, 309, 317, 318, 324, 325, 330, 332, 335, 336, 337, 338, 341, 342, 343, 344, 346, 347, 348, 353, 354, 357, 363, 419, 420, 428, 429, 430, 431, 432, 433, 435, 447, 448, 451 (except in case of theft, when non-bailable), 461, 462, 471 (cognizable when the forged document is a promissory note of the Government of India) and 498-C.

(2) Non-bailable :—Ss. 131, 132, 133, 134, 224, (except when there is resistance or obstruction to the lawful apprehension of another person or rescuing him from lawful custody), 225 (it is bailable when there is resistance or obstruction to the lawful apprehension of another person), 226, 231,

232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 302, 303, 304, 305, 306, 307, 311, 326, 327, 328, 329, 331, 333, 336, 354, 365, 366, 366-A, 366-B, 367, 368, 369, 371, 372, 373, 376, (except when the sexual intercourse was by a man with his own wife, the offence is non-cognizable), 377, 379, 380, 381, 382, 392, 393, 394, 395, 396, 397, 398, 399 400, 401, 402, 406, 407, 408, 409, 411, 412, 413, 414, 436, 437, 438, 439, 440, 449, 450, 452, 453, 454, 455, 456, 457, 458, 459, 460, 467, (cognizable when the valuable security is a promissory note of the Government of India), 489-A, 489-B, and 489-D.

Offences against the following sections of the Indian Penal Code are non-cognizable and are bailable or non-bailable according as they are grouped below.

(1) Bailable :—Ss. 129, 137, 154, 155, 156, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 171 (e) to 171 (i), 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 193, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 214, 217, 218, 219, 220, 221, 222 (if the person to be apprehended was under sentence of imprisonment for less than 10 years or lawfully committed to custody), 223, 225-A, 228, 229, 264, 265, 266, 267, 271, 272, 273, 274, 275, 276, 278, 284, 287, 288, 290, 294-A, 298, 312, 323, 331, 345, 352, 355, 358, 370, 374, 384, 385, 388, 389, 403, 404, 417, 418, 421, 422, 423, 424, 425, 427, 434, 465, 469, 471 (it is cognizable when the forged document is a promissory note of the Government of India), 472, 473, 474, 475, 477-A, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 494, 495, 497, 498, 500, 501, 502, 504, 506, 507, 508, 509, and 510.

(2) Non-bailable :—Ss. 121, 121-A, 122, 123, 124, 124-A, 125, 126, 127, 128, 130, 153-A, 194, 195, 222 (except when the person to be apprehended was under sentence of imprisonment for less than 10 years—when it is bailable) 227, 313, 314, 315, 316, 386, 387, 466, 467 (except when the valuable security is a promissory note of the Government of India it is cognizable), 468, 476, 477, 493, 496 and 505.

N. B.—Offences under Ss. 109, 110, 111, 113, 114, 116, 117, 120 (if the offence be not committed, it is bailable), 120-B (any other criminal conspiracy, it is bailable), 149, and 511 are cognizable or non-cognizable, bailable or non-bailable according as the offences abetted etc., are cognizable or not, or bailable or not.

Ss. 115, 118 and 119 are cognizable or non-cognizable according as the offences abetted etc., are cognizable or not but they are not bailable and in the latter two sections, if the offence be not committed, it is bailable.

S. 150 is cognizable but it is bailable or non-bailable on the same principle.

S. 196 is non-cognizable but bailable or non-bailable according as the offence of giving such evidence is bailable or not.

SCHEDULE C.

Offences punishable under the Penal Code with

I- Death.

(a) may be inflicted :—Ss. 121, 132, 194 (if innocent person be thereby convicted), 302, 303, 305, 307, 396.

(b) must be inflicted :—S. 303 (murder if committed by a life convict.)

II- Transportation.

(a) for life which may be inflicted :—Ss. 75, 121, 121-A, 122, 124-A, 125, 128, 130, 131, 132, 194, 222, 225, 232, 238, 255, 302, 304, 305, 307, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477, 489-A, 489-B and 489 D.

(b) for life which must be inflicted :—Ss. 226 and 311.

(c) for any term which may be inflicted :—Ss. 121-A, 124-A.

(d) which may be inflicted for not less than seven years and not more than the term for which the offender might be imprisoned :—S. 59 I. P. C.

III- Penal Servitude.

This must be inflicted whenever a European or American is convicted of an offence punishable with transportation : S. 56 I. P. C.

IV- Imprisonment.

(a) which may extend to fourteen years :—

(1) Rigorous—S. 392.

(2) Either description—Ss. 115, 222, 457, 458.

(b) which may extend to ten years :—

(1) Rigorous—Ss. 194, 364, 382, 392, 394, 395, 396, 399, 400, 412, and 449.

(2) Either description—Ss. 75, 119, 121-A, 122, 123, 128, 130, 131, 132, 225, 232, 235, 238, 240, 251, 255, 304, 305, 306, 307, 313, 314, 315, 316, 326, 327, 328, 329, 331, 333, 366, 366-A, 366-B, 367, 371, 372, 373, 376, 377, 386, 388, 389, 409, 413, 436, 437, 438, 439, 450, 454, 455, 459, 460, 467, 489-A, 489-B, 489-D, 493 and 495.

(c) which may extend to ten years and shall not be less than seven years :—

(1) Rigorous—Ss. 397, (398 these are the only cases in which a minimum term of imprisonment is prescribed.)

(d) which extended to seven years :—

(1) Rigorous—Ss. 216-A, 393, 401 and 402.

(2) Either description—Ss. 115, 118, 124, 125, 126, 127, 134, 193, (giving or fabricating false evidence in a judicial proceeding), 201, 211 (if offence charged be punishable with imprisonment for 7 years or upwards and if offence be capital, or punishable with transportation for life), 213, 214, 216, 219, 220, 221, 222 (if person to be apprehended was under sentence

of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards), 225 (if charged with a capital offence or if the person is sentenced to transportation, penal servitude or imprisonment for 10 years or upwards), 231, 234, 243, 244, 245, 247, 249, 256, 257, 258, 259, 260, 281, 308, (if such act cause hurt to any person), 312 (if the woman be quick with child), 317, 325, 330, 363, 365, 369, 370, 380, 381, 387, 404 (dishonest misappropriation of property by clerk or person employed by deceased), 407, 408, 420, 433, 435, 451 (if the offence be theft), 452, 466, 468, 472, 473, 474, 475, 476, 477, 477-A, 489-C, 494, 496 and 506 (if threat be to cause death or grievous hurt).

(e) which may extend to five years :—

(1) Either description—Ss. 212, 239, 250, 253, 429, 430, 431, 432, 440, 457 (in order to the commission of an offence punishable with imprisonment), and 497.

(f) which may extend to four years :—

1. Either descriptions—S. 385.

(g) which may extend to three years :—

1. Simple—S. 129.

2. Rigorous—S. 226.

3. Either description—Ss. 117, 118, 121-A, 133, 148, 152, 161, 162, 164, 167, 181, 193 (giving or fabricating false evidence in any case), 201 (if punishable with transportation for life or imprisonment for 10 years), 205, 212, (if punishable with transportation for life or with imprisonment for 10 years), 213, (if punishable with transportation for life or with imprisonment for 10 years), 214(do.), 216(do.), 218, 221 (if punishable with transportation for life, or imprisonment for 10 years), 222, (if under sentence of imprisonment for less than 10 years or lawfully committed to custody), 225 if charged with an offence punishable with transportation for life or imprisonment for 10 years), 225-A (in cases of intentional commission or sufferance) 233, 235, 237, 242, 246, 248, 242, 261, 269, 308, 312, 324, 332

344, 347, 348, 379, 384, 404 (dishonest misappropriation of property knowing that it was in possession of a deceased person at his death, and that it has not since then in the possession of any person legally entitled to it), 406, 411, 414, 418, 419, 454 (in order to the commission of an offence punishable with imprisonment), 456, 462, 469, 484, 485, 487 and 488.

(h) which may extend to two years :—

1. Simple—Ss. 165, 169, 223, 225-A, 500, 501, and 502.

2. Either description—Ss. 135, 136, 144, 145, 147, 153A, 159, 170, 177 (if the information required be in respect of the commission of an offence, etc.), 189, 203, 204, 206, 207, 208, 209, 210, 211 (false charge of offence made with intent to injure), 215, 217, 221 (if with imprisonment for less than 10 years), 224, 225, 225-A (in case of negligent omission or sufferance), 229, 241, 254, 262, 270, 295, 304-A, 318, 338, 343, 345, 346, 353, 354, 355, 356, 385, 403, 421, 422, 423, 424, 427, 428, 451, (in order to the commission of an offence punishable with imprisonment) 453, 461, 465, 483, 498, 504, 505, 506 and 507.

(i) which may extend to one year :—

1. Simple—Ss. 163, 166, 168, 309, and 509.

2. Either description—Ss. 153, 171E, 171F, 190, 264, 265, 266, 267, 296, 297, 298, 323, 342, 357, 374, 417, 434, 448, 482, 486, 489 and 508.

(j) which may extend to six months :—

1. Simple—Ss. 172, 173, 174, 175, 176, 177, 178, 179, 187 (wilfully neglecting to aid public servant who demands aid in the execution of process, the prevention of offences, etc.,) 228 and 291.

2. Either description—Ss. 138, 143, 151, 153, (if rioting not committed), 157, 158, 182, 183, 188, (if disobedience causes danger to human life, health or safety, etc.,), 202, 225-B, 269, 271, 272, 273, 274, 275, 276, 279, 280, 282, 284, 285, 286, 287, 288, 289, 294-A, (keeping a lottery office), and 337.

(k) which may extend to three months :—

(1) Simple—S. 180.

(2) either description Ss. 140, 171, 186, 277, 292, 293, 294, 336, 352, 426, 447 and 491.

(l) which may extend to one month :—

(1) simple—Ss. 172—176, 187, 188, 341, 358.

(2) either description—Ss. 160, 184, 185, 334, 490 and 492.

(m) which may extend to 24 hours :—

(1) simple, S. 510.

V. FORFEITURE.

(a) when all the offender's property may be forfeited: S. 62.

(b) when all the offender's property must be forfeited: Ss. 121, 122.

(c) when the rents and profits of the offender's whole estate, which accrue during his transportation or imprisonment, may be forfeited : S. 62.

(d) when specific property may be forfeited : Ss. 126, 127.

(e) When specific property must be forfeited : S. 169.

VI. Fine.

(1) the only punishment :—

(a) Unlimited : Ss. 155, 156 and 171 (g).

(b) Limited to Rs. 1,000. Ss. 154 and 294 A (Publisihing proposals relating to lotteries).

(c) Limited to Rs. 500. Ss. 137, 171 (h), 171 (i), and 278.

(d) Limited to Rs. 200. Ss. 263 A, 283 and 290.

(2) and additional punishment unlimited :—Ss. 115, 118, 120 (any other criminal conspiracy), 121, 121-A, 122, 124, 126-134, 181, 193, 194, 201, 209, 211-214, 216, 216-A, 225, 226, 231-235, 237-240, 242-253, 255-259, 302, 304-307, 311-314,

316, 325-331, 333, 344, 347, 348, 363-367, 369-373, 376, 377, 380-382, 386-389, 392-396, 399-402, 404, 407-409, 412, 413, 420, 435-440, 449-450, 466-469, 472-477, 484, 493-496.

(3) an alternative punishment, the amount being proportioned the amount to the value of the object of the offence: S. 254.

(4) an alternative or additional punishment.

(a) unlimited Ss. 116, 117, 119, 120, 124-A, 125, 135, 136, 138, 143-145, 147 148, 151-153, 153-A, 157, 158, 161, 162-170, 177, 189, 190, 201-208, 210-220, 221, 222-225, 225-A, 225-B 229, 260-267, 269, 270, 271, 281, 291-298, 304, 304-A, 308, 309, 312, 315, 317, 318, 324, 332, 343, 353-356, 374, 379, 384, 385, 403, 406, 411, 414, 417-419, 421-424, 426-434, 461, 462, 465, 477-A, 482, 483, 485-487, 488, 489, 497, 498, 500-502, 504-506, 508, 509, and 511.

(b) Limited to Rs. 2,000. S. 335.

(c) limited to Rs. 1,000. Ss. 172-179, 182, 183, 188, 228, 272-276, 279, 280, 282, 284-289, 323, 338, 342, 357 and 448.

(d) limited to Rs. 500. Ss. 140, 172-176, 180, 184, 186, 187, 277, 334, 337, 341, 352 and 447.

(e) limited to Rs. 250. S. 336.

(f) limited to Bs. 200. Ss. 171, 185, 187, 188, 358 and 491.

(g) limited to Rs. 100. Ss. 160, and 490.

(h) limited to Rs. 10. S. 510.

(i) proportioned to the value of the object of the offence, Ss. 241 and 492.

SCHEDULE D

The following offences may be tried in a summary way by Magistrates, and Benches of 1st Class.

1. Offences not punishable with death, transporation or imprisonment for a term exceeding six-months ;

2. Offences relating to weights and measures under Ss. 264, 265 and 266 I. P. C.

3. Hurt, under S. 323 I. P. C.

4. Theft, under S. 379, 380 or 381 I. P. C, where the value of the property stolen does not exceed fifty rupees.

5. Dishonest misappropriation of property under S. 403 I. P. C., where the value of the property misappropriated does not exceed fifty rupees.

6. Receiving or retaining stolen property, under S. 411 I. P. C., where the value of such property does not exceed fifty rupees;

7. Assisting in the concealment or disposal of stolen property under S. 414 I. P. C., where the value of such property does not exceed fifty rupees.

8. Mischief, under S. 427 I. P. C.

9. House-trespass, under S. 448 and offences Ss. 451, 453, 454, 456 and 457 I. P. C.

10. Insult with intent to provoke a breach of the peace, under S. 504, and Criminial intimidation, under S. 506 I. P. C.

11. Abetment of any of the foregoing offences.

12. An attempt to commit any of the foregoing offences, when such attempt is an offence.

13. Offences under S. 20 of the Cattle Trespass Act, 1871.

Provided that which a Magistrate exercises the special Powers conferred by Sec. 34 Cr. P. C., shall be tried in a summary way.

But Benches invested with the powers of a Magistrate of the second or third class may be empowered by the Local Government to try in the same way all or any of the following offences, namely:—

Ss. 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, 447 and 504.

2. Offences against Municipal Acts and the conservancy clauses of Police Acts punishable with fine, or imprisonment not exceeding one month with or without fine.

3. Abetment of any of the foregoing offences.

4. Attempt to commit any of the foregoing offences, when the attempt is an offence.

SCHEDULE E

The following offences are compoundable.

Ss. 119 and 120 (if the offence is not committed), 298, 323, 334, 341, 342, 352, 355, 358, 374, 426, 427, 447, 448, 490, 491, 492, 497, 498, 500, 501, 502, 504, 506 and 508.

The following offences are compoundable with the permission of the court before which a prosecution is pending.

Ss. 324, 325, 335, 337, 338, 343, 346, 357, 403, 417, 418, 419, 420, 430, 451, (except when the offence committed is theft), 482, 483, 486, 494 and 509.

The following offences are compoundable or not according as the offence abetted is compoundable or not.

Ss. 109, 110, 111, 113, 114, 115, 116, 117, 118 and 120.

Persons by whom offence may be compounded.

Sections.	Persons by whom offence may be compounded.
298	The persons whose religious feelings are intended to be wounded.
323, 334.	The person to whom the hurt is caused.
324, 325, 335, 337 & 338.	The person to whom hurt has been caused.
341, 342.	The person restrained or confined.
343-346.	The person confined.
352, 355 & 358.	The person assaulted or to whom criminal force is used.

357.	The person assaulted or to whom the force was used.
374.	The person compelled to labour.
403.	The owner of the property misappropriated.
417, 418, 419, and 420.	The person cheated.
426, 427 and 430.	The person to whom the loss or damage is caused.
447 and 448.	The person in possession of the property trespassed upon
451.	The person in possession of the house trespassed upon.
482.	The person to whom loss or injury is caused by such use.
483 and 486.	The person whose trade or property mark is counterfeited.
490, 491 and 492.	The person with whom the offender has contracted.
494.	The husband or wife of the person so marrying.
497 and 498.	The husband of the women.
500, 501 and 502.	The person defamed.
504.	The person insulted.
506.	The person intimidated.
508.	The person against whom the offence was committed.
509.	The women whom it is intended to insult or whose privacy is intruded upon.

When any offence is compounded, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence, with the permission of the court.

When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the court to which he is committed, or, as the case may be, before which the appeal is to be heard.

A High Court acting in the exercise of its powers of revision under S. 439 Cr. P. C., may allow any person to compound any offence which he is competent to compound under S. 345 Cr. P. C. The composition of an offence under S. 345, Cr. P. C., shall have the effect of an acquittal of the accused with whom the offence has been compounded.

SCHEDULE F

Irregularaties which do not vitiate proceedings, if the Magistrate erroneously, but in good faith does the following merely on the ground of his not being so empowered.

(a) to issue a search warrant under S. 98;

(b) to order, under S. 155, the Police to investigate an offence;

(c) to hold an inquest under S. 176;

(d) to issue process, under S. 186, for the apprehent sion of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(e) to take cognizance of an offence under S. 190, subsection (1); clause (a) or clause (b);

(f) to transfer a case under S. 192;

(g) to tender a pardon under S. 337 or 338;

(h) to sell property under S. 524 or 525; or

(i) to with-draw a case and try it himself under S. 528.

Irregularities which vitiate proceedings, if any Magistsate, not being empowered by law in that behalf, does any of the following.

(a) attaches and sells property under S. 88.

(b) issues a search warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department;

(c) demands security to keep the peace;

(d) demands security for good behaviour;

(e) discharges a person lawfully bound to be of good behaviour;

(f) cancels a bond to keep the peace;

(g) makes an order under S. 133, as to a local nuisance;

(h) prohibits, under S. 143, the repetition the continuance of a public nuisance;

(i) issues an order under S. 144;

(j) makes an order under Chapter XII;

(k) takes cognizance, under S. 190, sub-section(1), clause (c), of an offence;

(l) passes a sentence, under S. 349, on proceedings recorded by another Magistrate;

(m) calls, under S. 435, for proceedings;

(n) makes an order for for maintenance;

(o) revises, under, S. 515, an order passed S. 514;

(p) tries an offender;

(q) tries an offender summarily; or

(r) decides an appeal;

N. B.—No finding, sentence or order, will be set aside merely on the ground that the inquiry, trial or proceeding took place in a wrong place, unless it has occasioned a failure of justice, S. 531 Cr. P. C. Similarly, where a Magistrate without jurisdiction commits a case for trial to a court of Session or High Court, such committal is declared not void unless the court considers that the accused was prejudiced thereby. S. 532 Cr. P. C.

If a court before which a confession is made fails to record a memorandum required by S. 164, or fails to record the examination of the accused in the manner prescribed by S. 364, the court will take evidence that such person duly made the statement recorded. It will then be admitted unless the error has not injured the accused. S. 533 Cr. P. C.

An omission to inform under S. 447 Cr. P. C., any of his rights under Chapter XXXIII shall not affect the validity of any proceeding. S. 534 Cr. P. C. Omission to frame a charge, unless it has caused a failure of justice, will not be deemed invalid as affecting the finding or sentence. S. 535 Cr. P. C.

The trial by jury of an offence triable with the aid of assessors will not on that ground be invalid; and so will be the trial with assessor of an offence triable by jury, unless objection was taken before the court recorded its finding. S. 536 Cr. P. C.

No attachment will be illegal, nor the distrainer a trespasser, for defect or want of form in the summons, write of attachment or other proceedings relating thereto. S. 538 Cr. P. C.

SCHEDULE G

Offence in which a warrant shall ordinary issue in the first instance.

Ss. 121-136, 138, 144-148, 152-153, (except when rioting is not committed), 153-A, 159, 170, 181, 193-201, 203-216-A, 218-222, 224-225-A, but a summons in a case of negligent omission or sufference), 225-B, 226, 231-263-A, 281, 292-294, 302-318, 327-333, 353, 354, 356, 357, 363-374, 376 (when the sexual intercourse was not with the accused's wife), 377-424, 427-440, 448-483, 489-A-489-D, 493-510.

When offences under Ss. 109-120, 149, 150 and 511 are committed, a warrant or summons may issue in the first instance according to the offences abetted, attempted etc. In all other offences a summons shall ordinarily issue in the first instance.

SCHEDULE H

OFFENCES UNDER INDIAN PENAL CODE, AND BY WHAT COURT TRIABLE.

COURT OF SESSIONS.

121-124, 125-128, 130-132, 134, 194, 195, *201(1), *213(2), *214(3), 218-*221(4), *222(5), 226, 231, 232, 234, 236, 238, 244, 245, 255-258, 281, 302-304, 305-308, 311-316, 328-331, 333, 364, 366, 366A, 366B, 367, 370, 371, 376, 386-389, 395-400, 402, 412, 413, 433, 436-439, 449, 450, 459, 460, 466, 467, 472-477, 489A, 489B, 489C, 489D, 492, 495, 496.

COURT OF SESSIONS, CHIEF PRESIDENCY MAGISTRATE, DISTRICT MAGISTRATE OR MAGISTRATE OF 1ST CLASS SPECIALLY EMPOWERED BY THE LOCAL GOVERNMENT IN THAT BEHALF.

S. 124A.

COURT OF SESSIONS, PRESIDENCY MAGISTRATE OR MAGISTRATE OF FIRST CLASS.

Ss. 129, 133, 148, 152, 161, 162, 164, 167, 171E-171-I, 181, 193, 196-200, 205, *212(6), *216(7), 216A, *225A(8), 233, 235(9), 237, 239, 240, 242, 243, 246, 247-253, 259-261, 263, 304-A, 326, 332, 348, 362, 365, 369, 372, 373, 377, 382, 392-394, 401, 407, 409, 420, 435, 440, 455, 458, 465, 468, 469, 474-A, 484, 485, 494, 497, 500-502 and 507.

COURT OF SESSIONS, PRESIDENCY MAGISTRATE OR MAGISTRATE OF FIRST OR SECOND CLASS.

Ss. 324, 325, 335, 344-347, 381, 384, 385, 404, 406, 408, 411, 414, 418, 419, 429-432, 452, 454, 456, 457, 462, 487 & 488.

PRESIDENCY MAGISTRATE OR MAGISTRATE OF THE 1ST CLASS.

Ss. 153-A, 163, 168, 169, 204, 208-*211(10), 215, 229, 263-A, 505 and 509.

PRESIDENCY MAGISTRATE OR MAGISTRATE OF THE 1ST OR SECOND CLASS.

Ss. 135-139, 154-159, 165, 166, 173, 176-177, 182-190, 202, 203, 206, 207, 217, 223-*225(12), 225-B, 241, 254, 262, 264-276, 280, 282-284, 287, 288, 291-293, 295-298, 309, 337, 338, 342, 343, 353-355, 417, 421-424, 427, 428, 431, 453, 461, 482, 483, 486, 489, 490r492, 506(11) and 508.

ANY MAGISTRATE.

Ss. 140, 143, 147, 151, 153, 160, 170, 171, 172, 174, 227-279, 285, 286, 289, 290, 294, 294-A, 323, 334, 336, 341, 352, 356-358 374, 379, 380, 403, 426, 447, 448, *451(13), 504 and 510.

THE COURT BY WHICH THE OFFENCE ABETTED IS TRIABLE.

Ss. 109-120, 149, 227, *471(14) and 511.

THE COURT IN WHICH THE OFFENCE IS COMMITTED SUBJECT TO THE PROVISIONS OF CHAPTER XXXV OR IF NOT COMMITTED IN A COURT, A PRESIDENCY MAGISTRATE OR MAGISTRATE OF THE 1ST OR 2ND CLASS.

Ss. 175, 178, 179, 180 and 228.

* NOTE :—

(1) If punishable with transportation for life or imprisonment for ten years—by Court of Sessions, Presidency Magistrate or Magistrate of the first class and if punishable with less than 10 years' imprisonment by Presidency Magistrate or Magistrate of the first class, or court by which the offence is triable.

(2) If punishable with transportation for life or with imprisonment for 10 years—by Court of Sessions, Presidency Magistrate or Magistrate of the first class and if punishable with imprisonment for less than 10 years–by Presidency Magistrate or Magistrate of the first class, or court by which the offence is triable.

(3) If punishable with transportation for life or with imprisonment for 10 years—Court of Sessions, Presidency Magistrate or Magistrate of the 1st class, if with imprisonment for less than 10 years—Presidency Magistrate or Magistrate of the 1st class or court by which the offence is triable.

(4) If punishable with transportation for life or with imprisonment for 10 years—Court of Sessions, Presidency Magistrate or Magistrate of the 1st class, if with imprisonment for less than 10 years—Presidency Magistrate or Magistrate of the 1st, or 2nd class.

(5) If under sentence of imprisonment for less than 10 years or lawfully committed to custody—by Court of Sessions, Presidency Magistrate or Magistrate of the 1st class.

(6) If the offence be punishable with imprisonment for 1 year and not for 10 years—by Presidency Magistrate or Magistrate of the 1st class, or Court by which the offence is triable.

(7) Do. do. do.

(8) In case of negligent omission or sufferance,—by Presidency Magistrate or Magistrate of the first or second class.

(9) If Queen's coin—by Court of Sessions.

(10) If offence charged be punishable with imprisonment for seven years or upwards—by Court of Sessions, Presidency Magistrate or Magistrate of the 1st class and when the offence charged be capital, or punishable with transportation for life—by Court of Sessions.

(11) If threat be to cause death or grievous hurt etc.,—by Court of Sessions, Presidency Magistrate or Magistrate of the first class.

(12) If charged with an offence punishable with transportation for life, or imprisonment for 10 years—by Court of Sessions, Presidency Magistrate or Magistrate of the 1st

class, if charged with a capital offence; if the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards and if under sentence of death—by Court of Sessions.

(13) If the offence is theft—by Court of Sessions, Presidency Magistrate or Magistrate of the first or second class.

(14) When the forged document is a promissory note of the Government of India—by Court of Sessions.

SCHEDULE I

Offences under Indian Penal Code which require written complaints before prosecution is launched.

(1) Upon the complaint made by order of, or under authority from, the Governor-General in Council, the Local Governments or some officer empowered by the Governor-General in Council in this behalf.

Ss. 121-126, 128-130, 171 (E to I), or punishable under S. 108-A, or 153-A, or 294-A, or 505 I. P. C.

Ss. 161 and 164 (when the Judges and the public servants concerned are not removable from their office save by or with the sanction of a Local Government or some higher authority.

(2) Upon the complaint in writing of the public servant concerned or of some public servant to whom he is subordinate.

Ss. 172—188 I. P. C.

When the order is promulgated by Government no complaint is necessary as 188 I. P. C., does not apply to it. 24 M. 70.

Upon the complaint in writing of court or some other court to which such court is subordinate.

Ss. 193-196, 199, 200, 205-211 and 288, when such offence is alleged to have been committed in, or in relation to any proceeding in any Court.

Ss. 463, 471, 475 and 476 I. P. C., when the offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding.

SCHEDULE J

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

(S. 36 Cr. P. C)

Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest or direct the arrest of, and to commit to custody a person committing an offence in his presence, S. 64.

(2) Power to arrest, or direct the arrest in his presence of an offender, S. 65.

(3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, Ss. 83, 84 and 86.

(4) Power to issue proclamation in cases judicially before him. S. 87.

(5) Power to attach and sell property [*and to dispose of claims to attached property*] in cases judicially before him, S. 88.

(6) Power to restore attached property, S. 89.

(7) Power to require search to be made for letters and telegrams, S. 95.

(8) Power to issue search warrant, S. 96.

(9) Power to endorse a search warrant and order delivery of thing found, S. 99.

(10) Power to command unlawful assembly to disperse, S. 127.

(11) Power to use civil force to disperse unlawful assembly, S. 128.

(12) Power to require military force to be used to disperse unlawful assembly, S. 130.

(13) [* * *]

(14) Power to authorise detention [*not being detention in the custody of the Police*] of a person during a police investigation, S. 167.

[(14-A) *Power to postpone issue of process and enquire into case himself*, S. 202.]

(15) Power to detain an offender found in court, S. 351.

(16) Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction, S. 445.

(17) Power to apply to District Magistrate to issue commission for examination of witness, S. 506 (2).

(18) Power to recover forfeited bond for appearance before Magistrate's Court, S. 514 [*and to require fresh security*, S. 514-*A*.]

[(18-A) *Power to make order as to custody and disposal of property pending inquiry or trial*, S. 516-*A*.]

(19) Power to make order as to disposal of property, S. 517.

(20) Power to sell * * property of a suspected character, S. 525.

[(21) *Power to require affidavit in support of application*, S. 539 *A*.]

[(22) *Power to make local inspection* S. 539 *B*.]

Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of a third class.

(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, S. 155.

(3) Power to postpone issue of process [*and to enquire into a case or direct investigation*] S. 202.

(4) [* * *]

Ordinary Powers of a Magistrateof the First Class.

(1) The ordinary powers of a Magistrate of the second class.

(2) Power to issue search warrant otherwise than in course of an inquiry, S. 98.

(3) Power to issue search warrant for discovery of persons wrongfully confined, S. 100.

(4) Power to require security to keep the peace, S. 107.

(5) Power to require security for good behaviour S. 109,

(6) Power to discharge sureties, S. [126A.]

[(6-A) *Power to make orders as to local nuisances, S.* 133.]

(7) Power to make orders, etc, in possession cases, Ss. 145, 140 and 147.

[(7-A) *Power to record statements and confessions during a police investigation. S.* 167.]

[(7-AA) *Power to authorise detention of a person in the custody of the Police during a police investigation, S.* 167.]

[(7-B) *Power to hold inquests, S.* 174.]

(8) Power to commit for trial, S. 206.

(9) Power to stop proceedings when no complaint, S. 249.

(*Ordinary Powers of Provincial Magistrates.*)

[(9-A) *Power to tender pardon to accomplice during inquiry into case by himself, S.* 337.]

(10) Power to make orders of maintenance, Ss. 488 and 489.

(11) Power to take evidence on commission, S. 503.

(12) Power to recover penalty on forfeited bond, S. 514.

[(12-A) *Power to require fresh security S. 514-A.*]

[(12-B) *Power to re-call case made over by him to another Magistrate, S. 528 (4).*]

(13) Power to make order as to first offenders, S. 562.

[(14) *Power to order released convicts to notify residence, S. 565.*]

Ordinary Powers of a Sub-divisional Magistrate [appointed under S. 13.]

(1) The ordinary powers of Magistrate of the first class.

(2) Power to direct warrants to land-holders, S. 78.

(3) Power to require security for good behaviour, S. 110.

(4) [* * *]

(5) Power to make orders prohibiting re-petitions of nuisances, S. 143.

(6) Power to make orders under S. 144.

(7) Power to depute Subordinate Magistrate to make local inquiry, S. 148.

(8) Power to order police investigation into cognizable case, S. 156.

(9) Power to receive report of police-officer and pass order, S. 173.

(10) [* * *]

(11) Power to issue precess for person within local jurisdiction who has committed an offence outside the local jurisdiction, S. 186.

(12) Power to entertain complaints, S. 190.

(13) Power to receive police-reports, S. 190.

(14) Power to entertain cases without complaint, S. 190.

(15) Power to transfer cases to a Subordinate Magistrate, S. 192.

(16) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, S. 349.

(17) Power to forward record of inferior Court to District Magistrate, S. 435 (2).

(18) Power to sell property alleged or suspected to have been stolen, etc., S. 524.

(19) Power to withdraw cases other than appeals, and to try or refer them for trial, S. 528.

(20) [* * *]

Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-Divisional Magistrate.

[(A) *Power to try juvenile offenders, S. 29 A.*]

(2) Powers to require delivery of letters. telegrams etc., S. 95.

(3) Power to issue search warrants for documents in custody of postal or telegraph authority, S. 96.

(4) Power to require security for good behaviour in case of sedition, S. 108.

(5) Power to discharge persons bound to keep the peace or to be of good behaviour, S. 124.

(6) Power to cancel bond for keeping the peace, S. 125.

[(6-A) *Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, S. 193 B.*

(7) Power to try summarily, S. 260.

[(7 A) *Power to tender pardon to accomplice at any stage, of a case S. 337.*

(8) Power to quash convictions in certain cases, S. 350.

(9) Power to hear appeals from orders requiring security for, *keeping the peace or* good behaviour, S. 406.

[(9 A) *Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, S. 406 A.*]

(10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, S. 407.

(11) Power to call for records, S. 435.

(12) Power to order inquiry into complaint dismissed or case of accused discharged, S. 436.

(13) Power to order commitment, S. 437.

(14) Power to report case to High Court, S. 438.

(15) Power to try European British subjects, S. 443.

(16) Power to sentence European British subject to more than three month's imprisonment or one thousand rupees fine, or both, S. 446.

(17) Power to appoint person to be public prosecutor in particular case, S. 492 (2).

(18) Power to issue commission for examination of witness. Ss. 503, 506.

(19) Power to hear appeals from or revise orders passed under Ss. 514, 515.

(20) Power to compel restoration of abducted female, S. 552.

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(1) Under the Punjab Frontier Crimes Regulation 1901 (III of 1901), additional District Magistrates appointed under S. 4 of the Regulation have the powers specified in Part V of the Third Schedule—see S. 4 (2) of the Regulation, P. and N. W. F. Code.

SCHEDULE K

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED. (Ss. 37 & 38 Cr. P. C.)

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.

By the Local Government.

(1) Power to require security for good behaviour in case of sedition, S. 108.

(2) Power to require security for good behaviour S. 110.

(3) [* * *]

(4) Power to make orders prohibiting repetitions of nuisances, S. 143.

(5) Power to make orders under S. 144.

(6) [* * *]

(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, S. 186.

(8) Power to take cognizance of offences upon complaint, S. 190.

(9) Power to take cognizance of offences upon police reports, S. 190.

(10) Power to take cognizance of offences without complaint, S. 190.

(11) Power to try summarily, S. 260.

(12) Power to hear appeals from convictions by Magistrate of the second and third class, S. 407.

(13) Power to sell property alleged or suspected to have been stolen, etc., S. 524.

(14) [* * *]

(15) Power to try cases under S. 124-A of the Indian Penal Code.

By the District Magistrate.

(1) Power to make orders prohibitting repetitions of nuisances, S. 143.

(2) Power to make orders under S. 144.

(3)] * * *]

(4) Power to take cognizance of offences upon complaint, S. 190.

(5) Power to take cognizance of offences upon police reports, S. 190.

(6) Power to transfer cases, S. 192.

(1) [1 * * *]

(2) Power to make orders prohibiting repetitions of nuisances, 143.

(3) Power to make orders under S. 144.

(3-*a*) *Power to record statements and confessions during a police investigation*, S. 164.

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	By the Local Government.	(3-*b*) *Power to authorise detention of a person in the custody of the Police during a police investigation*, S. 167.
		(4) Power to hold inquests, S. 174.
		(5) Power to take cognizance of offences upon complaint, S. 190.
		(6) Power to take cognizance of offences upon police reports, S. 190.
		(7) Power to take cognizance of offences without complaint, S. 190.
		(8) Power to commit for trial, S. 206.
		(9) Power to make orders as to first offenders, S. 562.
	By the District Magistrate.	(1) Power to make orders prohibiting repetitions of nuisance, S. 143.
		(2) Power to make orders under S. 144.
		(3) Power to hold inquests, S. 174.
		(4) Power to take cognizance of offences upon complaint, S. 190.
		(5) Power to take cognizance of offences upon police reports, S. 190.

(1) The words and figures "(1) Power to pass sentences of whipping, S. 32 were repealed by the whipping Act, 1909) IV of 1909), General Acts, Vol. VI, Appendix.

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BEINVESTED.	By the Local Government.	(1) Power to make orders prohibiting repetitions of nuisance, S. 143.
		(2) [* * *]
		(3) Power to hold inquests, S. 174.
		(4) Power to take cognizance of offences upon complaint, S. 190.
		(5) Power to take cognizance of offences upon police reports, S. 190.
		(6) [* * *]
	By the District Magistrate.	(1) Power to take orders prohibiting repetitions of nuisance, S. 143.
		(2) [* * * *]
		(3) Power to hold inquest, S. 174.
		(4) Power to take cognizance of offences upon complaint, S. 190.
		(5) Power to take cognizance of offences upon police reports, S. 190.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED.	By the Local Government.	Power to call for records, S. 435.

SCHEDULE L

Offences under various Laws punishable with whipping.

Juvenile offenders may be punished with whipping under the following laws for the abetment or commission of, or attempt to commit the same.

GENERAL ACTS.

1. The Police Acts, 1861 (V of 1861). S. 34.

2. The Public Gambling Act, 1867 (III of 1867) Ss. 4, 13 and 15.

3. The Cattle Trespass Act, 1861 (I of 1871), S. 24.

4. The Northern India Canal and Drainage Act, 1873 (VIII of 1873), S. 70, clause (1) and (2).

5. Opium Act, 1878 (I of 1878), S. 9.

6. The Indian Forest Act, 1878 (VII of 1878), Ss. 25, 32 and 62 and rules made under S. 41, for the infringment of which imprisonment is prescribed as a penalty.

7. The Indian Arms Act, 1878 (XI of 1878), Ss. 19, 20, 22 and 23.

8. The Indian Salt Act, 1882 (XII of 1882), S. 9 & 10.

9. The Telegraph Act, 1885 (XIII of 1885), Ss. 24 and 25.

10. The Indian Railway Act, 1890 (IX of 1890), Ss. 126, 127, 128 and 129.

11. The prevention of Cruelty to Animals Act, 1890 (XI of 1890) Ss. 3, 4 and 5.

12. The Prisons Act, (IX of 1894), S. 42.

13. The Excise Act, 1896 (XII of 1896), Ss. 45, 46, 48, 49 and 51.

The Indian Fisheries Act, 1897 (IV of 1897), Ss. 4 & 5.

15. The Reformatory Schools Act, 1897 (VIII of 1897), Ss. 27 and 28.

16. The Indian Post Office Act, 1898 (VI of 1898) Ss. 61, 62 and 68.

17. The Ancient Monuments Provision Act, 1904 (VII of 1904), S. 16.

18. The Indian Electricity Act, 1910 (IX of 1910), S. 40.

19. The Criminal Tribes Act, 1911 (III of 1911), S. 22(1).

20. The Cantonment code, 1912, S. 67(1).

Local Acts

MADRAS.

1. The Madras District Police Act, 1859 (XXIV of, 1859). S. 47.

2. The Madras Forest Act, 1882 (V of 1882), Ss. 21 28 and 50 and rules made under sections 26 and 35, for the infringment of which imprisonment is prescribed as penalty.

3. The Madras Abkari Act, 1886 (I of 1886) Ss. 55 and 58.

4. The Madras City Police Act, 1888 (III of 1888), Ss. 46 53, 64, 67, 68, 71, 72 and 75.

5. The Madras Towns Nuisances Act, 1889 (III of 1889), Ss. 3, 5 and 7.

6. The Madras Salt Act, 1889 (IV of 1889), S. 74.

BOMBAY.

1. The Bombay Abkari Act 1878 (V of 1878), Ss. 4 and 48.

2. The Bombay Prevention of Gambling Act, 1887, (IV of 1878), Ss. 5 and 12.

3. The Bombay District Police Act, 1890 (IV of 1890) Ss. 62, 70 and 71.

4. The City of Bombay Police Act, 1902 (Bombay Act IV of 1902), S. 122.

BENGAL.

1. The Bengal Embankment Act, 1855 (XXXII of 1855), Ss. 16 and 17.

2. The Howrah Offences Act, 1857 (XXI of 1857) S. 20.

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