LECTURE XI.

CRIMINAL PROCEDURE

Introductory.

THE last Lecture brought to a close our brief sketch of the principles of the Criminal (Substantive) Law as exemplified in the Indian Penal Code. We now turn to an equally brief study of the more essential points of the Criminal Procedure (Adjective) Law.

The Substantive law could not be applied and worked without the aid of a Procedure law. In India the Criminal Procedure Code is Act X. of 1882, as amended by some subsequent Acts.[1]

It has been remarked that "the Law relating to Criminal Procedure is more constantly used, and affects a greater number of persons, than any other law." This, indeed, might be expected from the wide scope of the Code and the variety of subjects with which it deals.

It must not be supposed that Procedure law is satisfied with constituting Criminal Courts (for the trial of offences) and describing the various forms of trial held before those Courts. That is only one branch of the subject of Procedure, though a very important one. Procedure law goes much further: it looks to the conduct of individuals before offences are committed, and provides for the *prevention* of offences; and with this view it provides for the regulation of public life and traffic so as to obviate the occurrence of nuisances, obstructions to roads, riots, affrays, and the like. It contemplates the discovery and *investigation* of offences with a view to their satisfactory trial: and to this end considers the duty of the public or of particular classes or persons, in furnishing aid and information to the magistrate and the police authorities; it has also to provide the

[1] The first Criminal Procedure Code was passed in 1861, then a revised one in 1872, and finally the present law. The details of the history, and particulars of the amendments, are clearly stated in Dr. W. Stokes' Introduction (A.-I. Codes, Vol. II.).

machinery by which criminals and offenders are brought before the Court, and property or documents searched for and produced. To this head belongs the series of provisions regarding the summons, the warrant of arrest, and warrant of search. Even when the form of *proceeding at trials* (whether formal or summary) has been prescribed, and the question of *appeals* and *revisions* has been disposed of, there are still many subsidiary matters requiring consideration, such as the expenses of witnesses and the costs of trial; compensation to the injured party, penalty for frivolous complaints; the right of accused persons to be defended by counsel; the power of transferring cases from one court to another; and the mode of carrying out or inflicting sentences of punishment.

There are also many general regulative provisions which are brought under the head of criminal procedure, because the Magistrate rather than the civil Judge, watches over their execution. I need only instance, in this connection, inquests into the cause of death, and the protection of property in certain cases.

And this is a convenient point at which to notice that very often, for practical purposes, a knowledge of the Procedure law is necessary to complete, if I may so say, the treatment of a subject dealt with also by the Penal Code.

An example may be obtained by comparing sec. 71 of the Indian Penal Code with secs. 35, 235 of the Criminal Pro. Code. In some cases, a *series* of acts, though each act, strictly speaking, is an offence, is not allowed to be punished otherwise than as *one* (combined) offence. Otherwise (*i.e.*, when this rule does *not* apply), as many offences as are legally committed, consecutively or in the series, can be separately punished. But this by itself, might lead to confusion at trials as well as to unreasonable cumulative sentences: accordingly the Procedure law steps in to prescribe both how the trial and the joining of acts in one charge, is to be arranged, and how cumulative sentences are limited.

So, again, the Substantive law informs us that when a Court pronounces a sentence of imprisonment that is to take effect in default of payment of the fine awarded, the term is not to exceed a certain maximum with reference to the term of imprisonment

provided as the substantive punishment for the offence (p. 133); the Crim. Pro. Code goes further and requires a limit of the term with reference to the powers possessed by the Magistrate trying the case and passing sentence.

These introductory remarks might have been considerably extended; but what has been said will suffice to show you that a study of the Procedure law is of practical value for our own purposes; and therefore I may proceed at once to give you an outline of the law on the most important points. The order of subjects in the Code itself may, as a rule, be most conveniently followed for this purpose.

Preliminary Matters (Part I. of the Code).

As regards the extent of the operation of the Code, it applies to all British India, and governs all Criminal Proceedings whatever; without, however, annulling any special provision enacted, or special jurisdiction conferred, by any other law in force.

As usual, the Code has a series of definitions which should be read. It is only necessary specially to call attention to the term "Offence" which is here used for *all* offences, *i.e.*, acts or illegal omissions prohibited or declared penal by *any* law: there is no variety or restriction such as we noticed in the I. P. Code. This is obviously necessary from the nature of the law which prescribes the procedure followed in all trials for all kinds of offences (sec. 5).

The term "High Court" is used to mean the highest court of criminal jurisdiction in any province, for the purpose of appeal or revision, or other purposes as defined in the Code. In Bengal, the N. W. Provinces, Madras, and Bombay, the highest Court in the Province is already officially called a "High Court," being established by Royal Charter. In the Panjáb, the Court having (generally speaking) the same functions, is called the "Chief Court" because there is no Royal Charter and the judges are appointed by the Governor-General in Council. So in Lower Burma. In other provinces there are "Judicial Commissioners" and perhaps other officials differently styled; but under the Code they stand in the place of the "High Court," either generally or for certain purposes therein stated.

The term "European British Subject" is defined, as there are certain legal provisions relating to persons of this class, and it is necessary to state what degree of descent (and so forth) constitutes a man a *European* British Subject. There must be a limit; it would lead to great difficulty of proof, *e.g.* if the fact that any male-ancestor, however remote, happened to be an Englishman or a Scotchman, would constitute the person a "European."

I will only allude to one more term. The word "place" is conveniently employed as a short term to *include* (not only a spot of ground, but) also a house, a building, a tent, or a vessel (ship, &c.).

Other definitions will be more conveniently noticed in the course of our further remarks, where they come into use.

Constitution and Powers of Criminal Courts.

Part II. of the Code naturally divides its provisions under the following heads:—

(A) The constitution of Courts.

(B) The (Criminal) Judicial *Districts* and *Divisions* within which the Courts have jurisdiction.

(C) The powers of the various Courts and grades of Magistrates within their local jurisdiction.

(A) The Code does not create "High Courts;" for these exist either under a Royal Charter, or under an Act of the Legislature; but it defines their powers and regulates their proceedings in Criminal cases.

It *actually constitutes*:—

(1) Courts of Session (Courts of Session Judges).

(2) Courts of Presidency Magistrates (in the "Presidency towns," Calcutta, Madras, and Bombay).

(3) Courts of ordinary Magistrates in three classes—1st class, 2nd class, and 3rd class, respectively.

As regards *local jurisdiction*, it is enough to mention that practically there are the following:—

1. The jurisdiction of the "High Court" extends not only

to the trial of any case whatever over the whole province, but to the supervision and control of all Criminal Courts, to the hearing of final appeals, and the exercise of powers of revision.

2. The Presidency Magistrates, existing only in the towns above mentioned, need not engage our attention.

3. The Courts of Session hear the graver kind of cases, which are always "committed" to them, after preliminary inquiry, by a magistrate; they try these cases with the aid of Assessors, and, in some cases (where the Government has directed it), with Juries.[2] They also exercise powers of appeal from Magistrates in their Division. Their local jurisdictions are the "Sessions Divisions."

4. There are "Districts" which are conterminous with the ordinary administrative "Districts." The chief officer is the "Magistrate of the District." Large districts are sometimes aided by being further split up into "Subdivisions of districts," and the Magistrate of such a subdivision becomes a District Magistrate for his subdivision; having a District Magistrate's powers, but exercising them in general subordination to the Magistrate of the (whole) District.

All other Magistrates, who may *individually possess* powers of the 1st class, 2nd class, or 3rd class, according to their standing and experience, are assistants to the Magistrate of the District. They may have various local official titles, as "Joint Magistrate," "Assistant Magistrate," "Deputy Magistrate," "Special Magistrate." Sometimes native gentlemen of rank, and estate holders, do good service as "Honorary Special Magistrates" in their "Jágír" (or other) estates. Others form "benches" for disposal of small cases in towns (secs. 14, 15). But as regards the procedure law, all are "Magis-

[1] Theoretically, of course, a High Court *could* try any kind of case, though in practice it only hears an exceptional class of original criminal cases.

[2] With regard to ordinary criminal trials (*i.e.* other than those in the High Courts), the system of trial by jury depends for its success upon the existence of a sufficient degree of intelligence and *freedom from* caste prejudice (and the like), in the class of persons available to be called as jurors. It is therefore necessary *to leave the Executive Government to determine whether any particular* district is fit for its introduction, and in what classes of cases it should be adopted.

trates" (subordinate to the "District Magistrate"), and of one or other of the three classes as regards powers.

A special office—that of "Justice of the Peace"—is also mentioned. It was originally required in days when the English servants of the E. I. Company began to reside in the districts outside the old centres of trade—the Presidency towns, and it was thought right that they should only be subject to a jurisdiction similar to that to which they would have been amenable in their own country. "European British Subjects" are still only liable to be criminally dealt with by Magistrates being Justices of the Peace.

The office was formerly restricted to Magistrates who were themselves European British subjects: but it is now also conferred *ex officio* on certain of the higher criminal authorities, whatever their nationality; because it is justly thought that any officer who is worthy to hold these responsible offices, must also be fit to be a Justice of the Peace, *i.e.*, to perform the special and very occasional duties of such an officer. The *ex officio* Justices of the Peace are, all Judges of High Courts, all Sessions Judges and "District Magistrates" (sec. 25). Others are appointed by notification, as provided by secs. 22 and 23. It is unnecessary to repeat the details of these sections.

It may perhaps be asked, why several classes or grades of Criminal Court, with different degrees of power, are necessary? If all persons selected for duty as Criminal Judges were equally able, experienced, and instructed, it might not be necessary; but practically, it is found desirable to graduate powers according to official standing, length of service and experience, and other circumstances; also to subject the lower grades to more supervision, and make their decisions more open to correction by appeal.

In practice, therefore, a few only of the gravest cases against European British subjects are tried by the High Courts (and with the aid of a Jury). The great bulk of grave offences occurring among natives of the country (and offences of secondary gravity of E. British subjects) are sent up to the Sessions Courts; all cases, for example, involving a sentence which may be death or transportation for life (in European cases, offences involving a sentence over three months and not exceeding one year's imprisonment).

All other cases are tried by Magistrates; the graver ones by Magistrates of the first class; while lesser cases can be disposed

of by Magistrates of the second class, and petty ones by those of the third class.

I will mention presently the definite limits of power in each class.

The graver cases that come before a High Court or Sessions Court, are not taken up on complaint (or police report) made directly to the Court, but after a "committal;" *i.e.*, after a preliminary proceeding before a properly authorised Magistrate, the object of which is to ascertain that there is a *primâ facie* case sufficient to go to trial, and to have all the evidence ready.

Magistrates, as we shall see, take up cases either (1) on direct complaint to them, or (2) on report (after investigation) by the police.

As regards the powers of Magistrates, they are of two kinds:—

1. Judicial powers, *i.e.*, authority to try a certain class of cases, and to pass a certain sentence.
2. Executive criminal powers, *i.e.*, to do various acts either directly connected with judicial cases, or required for the general maintenance of peace, and the prevention of offences.

(1) As to the *class of cases* which each grade has jurisdiction to take up:—Theoretically, High Courts and Courts of Sessions can try all classes of cases; (the latter cannot, however, try European British subjects for offences threatened by law with the penalty of death or transportation; nor for any other offence which though in itself cognizable by them, would require (practically) a sentence exceeding one year's imprisonment).

Magistrates of the different grades can try such *offences under the I. P. Code*, as are shown to be so triable in the 8th column of the 2nd Schedule to the Crim. Pro. Code.

In the case of *offences under other laws*, the special Act declaring them will usually itself specify which grade of Magistrate can try. But in case it does not, the general rule (sect. 49) is stated, that a *third* class Magistrate cannot try an offence for which the maximum punishment may extend to *one* year: A second class Magistrate cannot try one for which the maximum

may extend to three years, nor a first class Magistrate one in which the maximum penalty *exceeds* seven years.[1]

Accordingly, in the large class of special law offences (*e.g.*, under the Forest Act) punishable with not more than six months' imprisonment, *any* Magistrate can ordinarily try them; but in the Burma Forest Act there is an express provision that third class Magistrates are not to try Forest cases unless specially authorised.

In some Provinces, sec. 30 allows a special power to be given to District Magistrates—a power which relieves the Courts of Sessions from an excess of work.

With these special powers, the District Magistrates may try *all* cases not punishable with death. The trial is with the ordinary (but full or formal) procedure of a Magistrates' case (*i.e.*, without jury or assessors); and the sentence must not exceed seven years' imprisonment or transportation (also fine and whipping may be awarded according to law). But if the sentence of imprisonment (in any one case) exceeds *four* years, it is subject to confirmation by the Sessions Judge (sec. 34).

It may be mentioned that whenever a prisoner is charged with an offence (of a certain class) after a previous conviction (sec. 75, I. P. C)., and it appears to a Magistrate that he is an habitual offender, sec. 348 provides that he is to be sent for trial to the District Magistrate with powers under sec. 30 (if there is one) or to the Court of Sessions.

The judicial powers just considered, viz., as to the *class of case triable*, are one thing; the actual *powers of sentence*, are another. Magistrates continually try cases in which they would not be competent to inflict the whole sentence which might be awardable under the Penal Code.

As to powers of sentence:—

1. High Courts can pass any sentence authorized by law.
2. Sessions Judges can also pass any sentence; but if the sentence is of death, it must be confirmed by the High Court.

[1] It is needless, perhaps, to remind the reader, that though the maximum imprisonment provided in the section defining and dealing with the offence, is here (and in other cases) the standard by which to judge what class of Court can try it, this does not in any way empower the magistrate to inflict the whole maximum sentence: he can only give sentence up to the limit of his own class powers, to be mentioned next.

Joint Sessions Judges or Additional Sessions Judges have the same power. Where there is no Joint Judge, but an Assistant Sessions Judge is appointed (to help in a heavy Sessions Division), there are some restrictions on his powers specified in sec. 31.

3. Presidency Magistrates and Magistrates of the first class, can pass a sentence of *imprisonment* (*i.e.*, of either kind) up to *two years* (including solitary confinement as provided by law); also *fine* up to 1,000 Rupees, and *whipping*.
4. Magistrates of the second class; the same; but up to *six months'* imprisonment, and 200 Rupees, as the limit of *fine*.
5. Magistrates of third class; imprisonment up to *one month*, and fine up to 50 Rupees. They cannot award solitary confinement or whipping.

The general limit of powers does not prevent a Magistrate passing a sentence which involves a combination; as, for instance (sec. 33), where, having sentenced to imprisonment and fine, he has to specify an *alternative* sentence of imprisonment to be undergone in case the fine is not paid. This may be in addition to the amount of his powers. In general (by the Substantive law) the limit of this term "in default" is one-fourth of the term provided for the offence; but the Procedure law further adds that if the Magistrate has awarded substantive imprisonment as well as the fine, then the additional imprisonment (in default of payment) cannot exceed one-fourth of the Magistrate's own powers.

And where by reason of there being a conviction, at one time, of more than one offence, two or more sentences are passed, or when one transaction (which is the subject of trial) is made up of several parts, each calling for a distinct punishment (sec. 71, I. P. Code *not* applying), so that the several sentences form a *cumulative* punishment; sec. 35 provides that the fact of the *aggregate* sentence exceeding the Court's ordinary limit of power, does not necessitate a new trial before a Court with larger powers; but the sentence will be lawful provided that it does not amount to more than *twice* the ordinary powers, and also that under any circumstances, an aggregate sentence of imprisonment is not to exceed fourteen years.

It is usually known beforehand, either from the preliminary investigation of the Police, or from the examination of the complainant, whether the case is a grave one or a petty one; and so the Magistrate, in distributing cases for trial (sec. 192) would naturally use his discretion in sending cases to Magistrates, not only who have power to try, but whose class is such that *primâ facie* they will be able to award a sufficient sentence. Nevertheless, the law has made a convenient provision (sec. 349) that if a Magistrate *of the second or third class, having jurisdiction to try* a case, finds that a severer sentence than he can give, ought to be passed, he can find the accused guilty, and *record no sentence*, but send his proceedings to the District (or Subdivisional) Magistrate to whom he is subordinate; and this Magistrate may, if he thinks right (with or without recalling the witnesses, or making further enquiry), pass such sentence as he thinks fit, within the limit of his own powers.

This latter observe, only relates to cases where the Magistrate *has* jurisdiction to try the case, only the punishment required is more than he can award. In any case, if a Magistrate, on hearing the evidence, thinks it establishes an offence which he is *not competent to try* (sec. 346), he is bound to stay proceedings and submit the case to the Magistrate to whom he is subordinate; this officer will then refer it for trial to some competent Court, or hear it himself.

(2) The Executive powers of Magistrates, are chiefly required by the District and other grades of assisting Magistrates; and all the *ordinary* powers of each grade are specified in Schedule III. of the Code, a glance at which will at once indicate their nature. Besides these ordinary powers, Schedule IV. gives a further list of powers which *may* be *additionally* conferred by the proper authority.

It is not expected that a Forest Officer will carry in his head the whole of these details, but it may be useful to him to know where to look for information in cases where he has to make any application to a Magistrate. For example, he is likely, on occasion, to have to apply to a Magistrate to *entertain a complaint* of an offence, which is not one which, as a forest offence under the Forest Act, he thinks it necessary for the Police to take up; he may also want to apply for a *search*

warrant, or he may want an order to the *Police* to make an *investigation* into an offence in which they cannot by law act without such order. In those cases, it is of no use going to a second-class Magistrate to entertain a complaint, unless he has been invested with powers, or is in charge of a sub-division. It is no use asking a third-class Magistrate for an order to the Police to investigate (sec. 155); he has not, and cannot get, such powers. A search warrant (sec. 96) can be granted by any Magistrate.

Shortly, *everything* can be done by a Magistrate of the district, and *most* things by a Sub-divisional Magistrate, the difference being in certain more important and exceptional functions; and in the matter of appeals, Sub-divisional officers (being Magistrates of the first class) may be specially empowered to hear appeals from Magistrates of second and third class.

All Magistrates in a district, of whatever grade, are subordinate to the Magistrate of the district (sec. 17). Magistrates in the sub-division are subordinate to the Sub-divisional Magistrate, subject to the control of the District Magistrate (sec. 17, para. 2).

Magistrates of a sub-division are subordinate to the Sessions Court, only to the extent and for the purposes expressly provided by the Act.

General Preliminary Provisions.

The rather vague heading to Part III. of the Code becomes intelligible, when we see that the object is to establish certain preliminary rules and to declare certain duties, which are necessary in order to render the action of the criminal authorities in dealing with offenders and offences, effective. Several of these matters might have been perhaps brought in under other heads; but it was desirable to have them explained early in the Code, so as not to involve references forward, *i.e.*, to sections not yet read.

The first subject (Chap. IV.) is the *aid* which the Magistrate is entitled to ask and to receive, from the public generally or from certain classes of persons.

Every individual is bound to assist a Magistrate (or a Police Officer) who makes "a reasonable demand" for his aid:—

(*a*) In effecting an arrest.

(*b*) In preventing a breach of the peace.

(*c*) In preventing an injury to any public property or to a railway, telegraph or canal.

(*d*) In suppressing a riot or an affray (pp. 109, 110).

It is also the general duty of all persons whatever (sec. 44) "forthwith" to give information which they may possess regarding the commission, or the intention to commit, any of the graver class of offences specified in the section, such as treason, murder, housebreaking, robbery, &c.

Landowners, and the headmen of villages, having received special security of title from the law, as well as special emoluments of office, are justly held liable for special duty in suppressing crime such as indicated in section 45.

Another general subject is the *arrest of offenders*; on this the whole criminal administration depends. And "arrest" naturally includes the action to be taken if an arrested person escapes and has to be retaken. It also includes a determination of questions which arise (on making arrests), such as the right of search, the right to enter houses, private apartments, and to break open doors. The provisions on these matters are contained in Chap. V.

Rules regarding Arrest.

As to the formal act of making an arrest with due legality, whoever has the power to arrest (of which presently) must either touch or confine the body, (which is a symbol of the completion of the legal act)[1] unless the person submits to custody. Where the arrest is by warrant, the substance of the warrant must be stated to the person arrested, and (if required) the warrant shown (sec. 80). If forcible resistance is offered, any means[2] necessary to effect the arrest may be employed. But this does not extend to causing death, *except* the person is accused of an offence punishable with death or transportation for life, (and then of course only if it is absolutely unavoidable).

It may be necessary to enter buildings and search for an offender: any person in charge of the 'place' (p. 148) is bound to allow ingress for this purpose; but the process must be carried

[1] The arrest may be made at any time of day or night, or on a Sunday. (W. Stokes.)

[2] That is any means which a reasonable, prudent person would employ, with reference to the character of the resistance and the circumstances of the case.

out either under a warrant of arrest, or by a *police officer* legally entitled to arrest without a warrant (secs. 48, 49). If necessary, any outer or inner door or window may be broken open. Sec. 48 adds precautions to be taken (in India) where females are secluded.

Whenever a person is arrested without a warrant, or under a warrant which does not permit bail,[1] or when it does permit bail but the person arrested cannot furnish it, a police officer may search the prisoner and take charge of all that is found on him except his necessary wearing apparel.[2]

Then follow provisions determining under what circumstances arrests may be effected by a police officer *without a warrant*, or by a private person without a warrant. The sections (54, *ff.*) may be read for the details. In principle, the police can arrest without warrant:—

(1) In those graver offences said to be "cognizable," *i.e.*, specified in the Schedule as cases in which the police can at once take action.

(2) Also in the case of persons found with implements of housebreaking.

(3) Persons who have been proclaimed offenders, *i.e.*, persons accused of a grave (non-bailable) offence who have eluded pursuit.

(4) Persons in possession of stolen property.

(5) Persons obstructing a police officer in execution of his duty.

(6) Persons who escape, or attempt to escape from custody.

(7) Any suspected deserter (from army or navy).

(8) Where the person refuses to give his (true) name and address—even in a non-cognizable case (sec. 57). A certain further power is given (sec. 55) only to *officers in charge of a police station*.

It is desirable also to explain that *any person* (without a warrant) (sec. 59) may arrest a person who—

[1] The subject of bail, which means finding security for appearance instead of being kept in custody, is dealt with later on.

[2] Observe that a *police officer* does this; where the arrest is made by a private person, that person must hand over the prisoner first.

(1) In his presence commits a non-bailable and cognizable offence.

(2) Is a proclaimed offender.[1]

There is a special power of arrest given to Forest Officers (by the Forest Act); and several special laws (Canals, Customs, Excise, Railways, &c.) give certain powers of arrest to the Departmental officers.

Then follow some necessary provisions (secs. 60, 61) to prevent any abuse of these large powers of arrest. Where there is no legal right to offer bail, the arrested person must "without unnecessary delay" be taken before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police Station; and generally, an arrested person must not be kept in police custody for more than twenty-four hours without obtaining a Magistrate's warrant of remand. This is an important security against wrongful confinement.

If a person escapes, he may at once be pursued and retaken in any part of British India.

Processes to Compel Appearance.

As these provisions for arrest without warrant, only relate to the gravest class of criminal cases, or to some offences under special laws, there remains a very large number of cases in which some milder means have to be provided for bringing offenders before the Magistrate. And as the law never puts forth greater force than is needed, these means are graduated *according to the class of offence.*

For procedure purposes, all offences are either "bailable"[2] or "non-bailable." And they are further classified with reference to the provisions regarding the means of procuring the attendance of the accused.

The case being "bailable" (sec. 496) means that the person

[1] Similar powers are given under certain sections of the Arms Acts (1878), &c. The person making the arrest must at once "make over" the prisoner (*i.e.*, must take him himself or send him by his servant) to a police officer.

[2] "Bail" refers to a formal promise (contained in a *bond* in prescribed form) to appear whenever required. It is backed by the undertaking of one or more (approved) persons who agree to be liable as sureties in a *certain sum of money* (as required) that the accused person does not abscond, and does appear as promised. "Recognizance" is a similar bond but without securities; *i.e.*, containing only a personal promise to appear, subject to a penalty in case of default.

after being brought up, is *entitled*, instead of being kept in custody while his case is pending trial, to be set free on giving bail as required by the Magistrate or Police Officer. When an arrest in such a class of case, is made by warrant, the warrant *may* specify that bail is to be taken (see p. 155). In minor (bailable) cases, the Magistrate or Police Officer can accept the prisoner's own recognizance or bond to appear.

In "non-bailable" cases, the person has *no right* to offer bail after he is brought up; but a Magistrate may direct him to be let go on bail, under the circumstances of doubt stated in sec. 497.[1]

And offences are further classified according to the mode by which the prisoner is brought up. If they are so grave that the prisoner may be arrested without warrant, they are "cognizable" cases. Most cognizable cases are also non-bailable, but some few are of such a character that bail is allowed.

The next less grave offences, are "warrant cases," *i.e.*, a Magistrate's warrant of arrest must be obtained; mostly they are bailable, but there are some exceptions.

The lesser class of offences are those in which it is sufficient to issue a formal order, called a "summons," for appearance. If the summons is disobeyed, a warrant can be issued: (and so it can in the first instance, if there is reason to believe that the accused will abscond, &c., so that a summons would be ineffective).

The appearance of witnesses in criminal cases is also obtained by "summons."

"Summons cases" are nearly always bailable.

The Second Schedule at once shows (for each offence *under the I. P. Code*) to what class each case belongs; and generally, by definition, a "Warrant Case" includes all in which the imprisonment specified exceeds six months, while "Summons Case" includes all in which it is less.

The *summons* is in writing in an established form and in duplicate; it is usually served through a Police officer (sec. 68). It is served personally, by exhibiting the original document and

[1] All the details about *bail*, its amount, form, &c., are collected together in one place towards the end of the Code, among the supplementary provisions.

delivering or tendering the copy or duplicate. If personal service is not possible because the accused cannot be found, the duplicate is left with some *adult male* member of the family *residing with* the accused; and this person must *sign a receipt* for it (sec. 70). If this method is impracticable, then one copy is affixed on some conspicuous part of the house where the accused ordinarily resides (sec. 71).

Where a summons is applied for to be served beyond the jurisdiction of the Magistrate, section 78 must be referred to.

Summons to persons "in the active service of the Government or of a Railway Company" may be sent to the head of the office for service (sec. 72).[1]

The *warrant* also is in writing, signed and sealed by the Magistrate, in an established form. A warrant once issued remains in force until it is cancelled by the Court, or until it is executed. In case of a *remand* during enquiry, there must be an express warrant to commit to custody under sec. 344.

A Magistrate *may* also direct, in issuing the warrant, that bail may be taken (*i.e.*, that a bond with an indicated number of securities for a specified amount of money, for his attendance, be executed), and then, when the person is apprehended, if he gives the required bail, he may be let go at once (sec. 76).[2]

Warrants are *ordinarily* directed to a *Police officer*, but *may* be directed to any one (sec. 77, see also section 78).

It should be borne in mind that *any* person *who is present in a Criminal Court* may be then and there arrested (as if a warrant had been issued) for any offence he may have committed (sec. 351); and any Magistrate may direct the arrest *in his own presence* of any one for whose arrest he is competent to issue a warrant (sec. 65).

For warrants to be executed outside the Magistrate's own jurisdiction, reference to sections 82 and 83—5 of the Code must be made.

In any case where a warrant cannot be executed by reason of the

[1] Soldiers on the march cannot be summoned as witnesses. At other times they would be summoned through their commanding officers.

[2] This will usually be done, where the offence is of the bailable class, *i.e.*, where the person on being brought up under the warrant, will have a right to be let go free on bail, pending further proceedings. But the direction to bail, *in the warrant*, is purely a matter of discretion of the Magistrate.

person absconding or concealing himself, a *proclamation* is read at some conspicuous place of the town or village where the accused resides, requiring him to appear within a period fixed but not less than thirty days. The proclamation is then affixed in some conspicuous part of his house, or at some place in the town or village; also a copy is posted at the Magistrate's court-house (sec. 87). At the same time *all* property is liable to attachment (sec. 88). If the accused does not appear within the time fixed, it may be sold and forfeited to Government, after six months; (unless it is perishable, when it may be sold at once and the proceeds treated as the property). Within two years, however, if the person appears and shows that he did not abscond or conceal himself for the purpose of evading justice, he can get the property (or the sale-proceeds) back.

When a warrant is executed, the substance is to be notified to the person, who may demand to see the warrant itself (sec. 80).

In executing a warrant, all the provisions about arrest generally (sec. 46, *ff.*) (p. 151), about the form of arrest, breaking open doors, searching prisoners, and the like, are applicable as they are in arrest without warrant.

Process of Search for Property and Documents.

Naturally connected with the subject of arresting or summoning the *person* of an offender, is that of searching for *property* or *documents* connected with criminal cases. Chap. VII. accordingly proceeds with the subject of "search warrants."

In general, a search warrant may be issued—

(*a*) when a summons *to produce* a document or thing (sec. 94) has not been, or is not likely to be, obeyed;

(*b*) where the Court considers that the purposes of any enquiry, trial or other proceeding under the Code, will be served by a general search or inspection.

The warrant may be either *general*, *i.e.*, to search any house or place within the jurisdiction of the Magistrate of the district, or *restricted* to the search of a particular place, or even a *specified part* of such place (sec. 97).

Search warrants are usually directed to a Police officer; and generally, the provisions relating to ordinary warrants, apply (sec. 101).

In any case the property found is to be taken to the Magistrate, as directed in sec. 99.[1]

Persons residing in, or in charge of, the place to be searched, are bound to allow ingress (sec. 102); and there is the same power as before described, of breaking open door or window if ingress cannot be had otherwise, and after due demand. So in searching a *zanána*, opportunity must be given for women to withdraw, but with precautions to prevent the clandestine removal of property. Before making a search, the officer conducting it *shall call two or more* respectable inhabitants of the neighbourhood to attend and *witness* the *search*. They cannot, however, be afterwards required to attend Court, unless specially summoned by the Magistrate (sec. 103). The *occupant* of the house or place searched, has a *right to attend* during the search. It is not said in the Code, but it is a rule of practice, that search is made by daylight unless there is an emergent reason otherwise.

[1] If large and heavy logs of timber, for instance, were found, it would, I presume, be sufficient to take steps to secure them, and it would be necessary to *report* the fact and take the magistrate's order.