

No. 1 of 1888.

An Ordinance to amend "The Criminal Procedure Code, 1883."

(See No. 3 of 1883.)

WHEREAS it is expedient to amend in some respects "The Criminal Procedure Code, 1883:" Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

Preamble.

1 Before making any order, under section 177 of "The Criminal Procedure Code, 1883," committing the accused for trial before the Supreme Court, the police magistrate shall, in every case, ask the accused to elect from which of the respective panels of jurors to be summoned for attendance and service during the criminal sessions at which the accused is to be tried the jury shall be taken for the trial, and the magistrate shall record such election, if made. The

Accused persons before being committed for trial before the Supreme Court may elect the panel from which the jury for the trial should be taken.

Criminal Procedure Code Amendment.

accused person so electing shall thereafter be bound by, and may be tried according to, his election, subject, however, in all cases to the provisions of section 288 as hereinafter amended of the said Code.

Section 181 amended.
Magistrate to endorse names of complainants and witnesses on back of each commitment.

2 In section 181 of the said Code the following words shall be inserted at the end thereof, and the said section shall take effect and be construed accordingly :

and the magistrate shall endorse the names of such complainants and witnesses on the backs of the respective commitments.

Section 287 repealed and new enactment substituted therefor.

3 Section 287 of the said Code is hereby repealed, and in lieu thereof the following enactment shall take effect :

The jury shall consist of such uneven number, not being less than seven or more than nine, as the Governor in Executive Council, by order applicable to any particular district or districts, may direct, except where the offence charged is one punishable with death, in which case the jury shall consist of nine persons. In all cases where the trial is for an offence punishable with death, the verdict shall be by a majority of at least two-thirds : in all other cases the verdict may be returned by a majority in number of the jury.

Section 288 amended.
What jury shall sit if the accused and the Attorney-General cannot agree.

4 The proviso in section 288 of the said Code is hereby repealed, and in lieu thereof the following proviso shall be taken and read as part of the said section :

Provided that if they do not agree, the accused person shall be tried by a jury selected from the list referred to as list (1) in section 323 of the said Code, unless the judge otherwise directs ; but in no case shall the accused person be allowed as of right the jury he asks for.

Section 359 amended.
Deposition of witness to be signed by interpreter.

5 Section 359 shall be taken and read as though the following words were inserted at the end thereof :

and where the evidence is taken under chapters XVI., XX., and XXI., shall also be signed by the interpreter, if any shall have been employed.

Section 372 amended.
Judgment in alternative.

6 Section 372 of the said Code shall be taken and read as though the following words were inserted between the second and third paragraphs thereof :

When the conviction is under the Ceylon Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the court shall distinctly express the same and pass judgment in the alternative.

Section 389 repealed.

7 Section 389 of the said Code is hereby repealed, and in lieu thereof the following enactment shall take effect :

Sentences on escaped convict.

No convict shall, by reason of his escape from prison, avoid any unexpired term of imprisonment, simple or rigorous, or any other punishment to which he was liable under any sentence or sentences passed on him prior to his escape.

Criminal Procedure Code Amendment.

When sentence is passed under the said Code on an escaped convict of death, or of fine or whipping with or without imprisonment, such sentence of death, fine, or whipping shall, subject to the provisions in the said Code contained, take effect immediately; and if the imprisonment under the new sentence is rigorous, and such convict was undergoing only simple imprisonment when he escaped, the rigorous imprisonment shall take effect immediately, and shall be enforced concurrently with the former sentence; but if such convict was undergoing rigorous imprisonment when he escaped, the rigorous imprisonment under the new sentence shall take effect after such convict has suffered rigorous imprisonment for a further period, commencing from the date of his re-capture, equal to that which at the time of his escape remained unexpired of his former sentence.

8 In section 404 of the said Code the following words shall be inserted at the end thereof, and the said section shall take effect and be construed accordingly :

who may file his petition of appeal in the court in which such judgment of acquittal has been pronounced within twenty-one days from the date of such judgment.

9 Section 467 of the said Code shall be taken and read as though the following words were inserted at the end thereof :

And such statement, when purporting to have been taken on oath or affirmation in the presence of the person affected thereby, who shall have had the opportunity to cross-examine, shall be admissible in evidence against such person without further proof. Provided that the witness who made the statement is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay and expense which the court considers unreasonable.

10 In the third column of schedule II. to the said Code the words "may arrest without warrant" shall be substituted for the words "shall not arrest without warrant" as applying to section 314 of the Ceylon Penal Code.

11 In the seventh column of schedule II. to the said Code the words "district court" shall be inserted as applying to sections 419, 454, 458, and 459 of the Ceylon Penal Code, and the said schedule shall be read and construed accordingly.

12 In proceeding under chapter XVI. of the said Code, the police magistrate may at any stage of the inquiry require the complainant or any witness for the prosecution or defence to execute a bond, with or without sureties, for his appearance to prosecute or give evidence, as the case may be, either before himself, or any other police magistrate, or before a superior court; and for the like purpose it shall be lawful for any police magistrate who examines any complainant or witness on commission under the provisions of chapter XXXVII. of the said Code, to require such complainant

Section 404 amended. Attorney-General may file appeal within twenty-one days from date of acquittal.

Section 467 amended. Record of examination of dying witnesses when receivable in evidence without further proof.

Offenders under section 314 of Penal Code may be arrested without warrant.

Schedule II. amended. District courts may try offences under sections 419, 454, 458, and 459 of Ceylon Penal Code.

A magistrate acting under chapter XVI. or XXXVII. may require bail from complainant and witnesses, and may in case of refusal or neglect commit party in default to prison.

Criminal Procedure Code Amendment.

or witness so examined to execute a bond, with or without sureties, as such magistrate may determine. If a complainant or witness refuses or neglects to execute such bond, the police magistrate may commit him to prison until such bond is duly executed, or until he shall be lawfully discharged.

In prosecutions for having given false evidence, deposition duly recorded shall be admitted without further proof.
Proviso.

13 The deposition of a witness, if it purports to have been taken and recorded in accordance with the provisions of the said Code, shall be receivable in evidence, without further proof, in any inquiry or trial in which such witness may be charged with having intentionally given false evidence.

Provided that the court may, if it thinks fit, summon and examine the judge, magistrate, or interpreter by whom the deposition was signed, or the person by whom such deposition was written.

Deposition of witness as to the custody or disposal of any matter or thing forwarded to a public officer for analysis and report, or of any instrument or weapon used in or about the commission of an offence.
Proviso.

14 Where the deposition of any witness is tendered in evidence for the purpose of proving the custody or disposal of any matter or thing forwarded in the course of any inquiry to any public officer for examination or analysis and report, or of proving the custody or disposal of any instrument, weapon, matter, or thing used in or about the commission of an offence, such deposition, if it purports to have been taken and attested by a police magistrate in the presence of the accused, may be given in evidence in any inquiry, trial, or proceeding under the said Code, although the deponent is not called as a witness, anything in the said Code to the contrary notwithstanding. Provided always that the court may, if it thinks fit, summon and examine such deponent as to the subject matter of his deposition.

Magistrate may record statements and confessions voluntarily made by an accused person at any stage of an inquiry or trial.

15* Any police magistrate may record any statement or confession made voluntarily by the accused at any stage of any inquiry or trial, and the same shall be recorded and signed in manner provided in section 136 of the said Code in respect of statements and confessions made before the commencement of any inquiry or trial. All such first-mentioned statements and confessions, purporting to have been duly recorded and signed in manner aforesaid, shall be admissible in evidence without further proof in any subsequent judicial proceeding, or in any later stage of the same judicial proceeding, subject, however, to the requirements of the first proviso contained in section 473 of the said Code.

Power to examine the accused at any stage of an inquiry or trial.

16* For the purpose of enabling an accused person to explain any circumstances appearing in the evidence against him, the court may at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the court considers necessary, and shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. No oath or affirmation shall be administered to the accused.

* See section 17 of Ordinance No. 22 of 1890.

Criminal Procedure Code Amendment.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

All questions put to, and answers given by, the accused shall, except in the Supreme Court, be recorded, signed, and certified in the same manner as the examination referred to in sections 368, 369, and 370 of the said Code.

Explanation.—The examination of the accused is for the purpose of enabling him to explain any circumstances appearing in evidence against him, and should, therefore, not be a general examination on whatever might suggest itself to the court. The discretion given by this section for questioning a prisoner is not for the purpose of driving him to make statements criminal of himself. It can only be properly used for ascertaining from a prisoner how he may be able to meet facts disclosed in evidence against him, so that those facts should not stand against him unexplained. Questions must not, therefore, be put to the prisoner merely to supplement the case for the prosecution when it is defective.

17 Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the magistrate within the local limits of whose jurisdiction a warrant is to be executed will prevent such execution, the magistrate issuing the warrant may, if he sees fit so to do, direct the warrant specially to any person; and a warrant so specially directed shall have effect, and may lawfully be executed by such person without such endorsement as aforesaid anywhere within the island, anything in the said Code to the contrary notwithstanding.

Warrants specially directed may be executed anywhere within the island without endorsement.

Provided always that upon the execution of such warrant the provisions of sections 60 and 61 of the said Code shall apply.

Proviso.

18 Any warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to police officer.

19 If in the course of a trial by jury before the Supreme Court any witness shall on any material point contradict the evidence previously given by him at the inquiry before the magistrate, it shall be lawful for the presiding judge, upon the conclusion of such trial, to have such witness tried by the same jury on an indictment which may then and there be presented by the Attorney-General in the form (4) contained under the heading of "Charges with two or more heads" in schedule III. to the said Code; and such witness, if convicted, shall be liable to the punishment prescribed in section 190 of the Ceylon Penal Code.

Summary trial of witness on alternative charges for giving false evidence.

Provided, however, that the presiding judge may, if he considers expedient, adjourn the trial of such witness for such period as he may think fit, and may commit such witness to custody or take bail in his own recognizances or with sureties for his appearance; and such adjourned trial shall be before the same or any other jury as the judge may direct.

Proviso.

Persons suspected to be lunatics where and how to be remanded.

20 Whenever a magistrate or judge in proceeding under chapter XXXIII. of the said Code has occasion to subject any accused person who is suspected to be of unsound mind to medical observation, he shall remand such person once or oftener for such reasonable time as shall be specified in the order of remand, either to the custody of the fiscal to be by him detained in prison, or of the officer in charge of such house or place of observation as may be appointed by the Governor under the provisions of section 6 of "The Lunacy Ordinance, 1873," to be by such officer detained in such house or place of observation. And every person so remanded shall be subject to the inspection of the medical officer of the prison, or of the house or place of observation, in which he may be detained.

Whipping of juvenile offenders under twelve years of age.

21 Whenever a male offender under twelve years of age is sentenced by any court to whipping without any other punishment in addition thereto for any offence either under the Ceylon Penal Code or any other Ordinance in force in this colony, such whipping, which shall in no case exceed ten strokes with a light cane or rattan, shall be inflicted forthwith within the court premises and in the presence, if he desires to be present, of the parent or guardian of such offender, anything in "The Criminal Procedure Code, 1883," to the contrary notwithstanding. Provided that such whipping shall not be inflicted unless it appears to the court that the offender is in a fit state of health to undergo the same.

Proviso.

To be read as one with "Criminal Procedure Code, 1883."

22 This Ordinance and the Ordinance No. 3 of 1883, intituled "The Criminal Procedure Code, 1883," shall be read together as one Ordinance.

7th January, 1888.
