

THE COURTS MANUAL

PART IV

CRIMINAL PROCEDURE

PARA

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အပိုင်း ၄

ရာဇဝတ်ကျင့်ထုံး

အနက်အဓိပ္ပာယ် ခွဲခြားရန် မလိုလျှင် “စစ်ဆေးစီရင်ခြင်း” ဟူသော စကားတွင် “စုံစမ်းစစ်ဆေးခြင်း” ဟူသော စကားပါဝင်သည်။ ထို့ပြင် “စစ်ဆေးစီရင်သည်” ဟူသော စကားတွင် “စုံစမ်းစစ်ဆေးသည်” ဟူသော စကားပါဝင်သည်။ ဤအပိုင်း၌ နှစ်ဘေးအနား ကွက်လပ်တွင် စာလုံးမရှင်ပြထားသည့် ဂဏန်းများသည် ၎င်းတို့အပေါ်၌ ပြထားသည့် အက်ဥပဒေ၏ အခန်းများကို ရည်ညွှန်းသည်။ ပုံဆွဲနှင့် ပြထားသည့် ဂဏန်းများမှာ ၎င်းတို့အပေါ်၌ ပြထားသည့် အက်ဥပဒေ၏ ပုဒ်မများကို ရည်ညွှန်းသည်။ အခြားနည်း သီးခြား ဖော်ပြထားခြင်း မရှိလျှင် ကိုးကားဖော်ပြထားသော ပုဒ်မသည်၊ ရာဇဝတ်ကျင့်ထုံး ဥပဒေ၏ ပုဒ်မဖြစ်သည်။

PART IV.

Criminal Procedure.

Where there is no need for distinction the words "trial" and "try" include "inquiry" and "inquire into" respectively. In this Part, in the marginal notes Roman numerals denote the Chapters and Arabic numerals the section of the Act under which they appear. A section quoted, unless otherwise specified, is a section of the Code of Criminal Procedure.

Chapter 15

Jurisdiction of Magistrates and their ranks.

Their special Powers.

363. The Supreme Court, after establishing and constituting the State Courts, Divisional Courts and Township Courts, had invested them with Criminal Powers in accordance with the provisions of Judiciary Law.

364. The Supreme court, under section II of the Judiciary Law, had invested the Township Magistrates with Special Powers to make out sentences in all *Magistrates invested with powers* criminal case except cases in which death sentence may be imposed under section 30 of Criminal Procedure Code by virtue of their post.

Besides the Township Magistrates, the Additional Township Magistrates who are invested with Firstclass powers had been invested with Special Powers under the Same Section.

Those Magistrates who had been invested with Special Power under section 30 of the Criminal Procedure Code can make out adequate punishment and they are directed to exercise their Powers independently in cases where there are no difficulties.

365. A member of the Myanmar Police Force who committed any offence under the provisions of section *cases in which members of Myanmar Police Force prosecuted under unde Myanmar Police Force Discipline Law* II to 25 of the Law shall be tried by the Police Court under section 26 of the Myanmar Police Discipline Law. Apart from these offences, any member of Myanmar Police Force who committed offences under the existing Laws shall be tried by the courts constituted and established under the Judiciary Law. The courts shall follow the following instructions with regard to taking over of the Myanmar Police Force who are to be tried the courts.

(a) In cases where the members of the Myanmar Police Force committed offence under the Myanmar Police Force Discipline Law and offences under the existing Laws in the same transaction or where the member of the Myanmar Police Force and other

civilians committed offence jointly, the members of the Myanmar Police Force shall be tried by the Police Court, and then for the offence under the existing Laws, they shall be handed over to the criminal courts.

(b) The members of the **Myanmar Police Force** who committed offence under other existing Laws only shall be handed over to the criminal courts.

(c) The criminal court should know whether the accused Member of Myanmar Police Force has been taken cognizance by the Police court if so, the stage of the case at the Police Court. Therefore the Criminal Court, in order to try a member of the Myanmar Police Force under section 26 of the Myanmar Police Force, Discipline Law shall inform Police Station, Police Force, Police Battalion and Police Training School where the accused is posted and take over the accused. If there is any difficulties in taking over the accused, the criminal court shall put for ward the case to the higher court and the copy of its action shall be submitted to the Supreme Court.

Therefore in direct complaint cases or in cases sent up to the Court, or in cases, after examining the witness where it appears that any member of the Myanmar Force is found to have committed any offence, except those offences under Myanmar Police Force Law they shall be tried by in accordance with the above instructions, Criminal Procedure Code and the provisions of the Courts Manual.

Benches of Magistrates.

366. The Supreme Court may, under Section 8 of Judiciary Law instruct the State or Divisional Courts or Township Courts to try Criminal Cases by a bench of more than one Magistrate.

Distribution of Criminal Cases.

367. (a) The State or Divisional Judge may try himself the criminal cases sent up to the State or Divisional Court, or distribute them to his subordinate Judges of State or Divisional rank if any for disposal.

(b) It was necessary that the Judge should distribute Criminal Cases basing on the following facts.

(1) The fact of even distribute based on the number of cases distributed per month and the number of cases pending case before a judge.

(2) The fact of Criminal Power of each Judge and his efficiency in the disposal of cases should be taken into consideration.

(3) The important criminal cases and complicated criminal cases should be tried by the experienced Judges.

(4) Contested Cases should be fairly distributed so as to gain experience.

(5) Arrangement should be made for those cases which can be disposed of in a day or in few days, to be disposed of speedily.

(6) To train Judicial Officers to gain well rounded experience by letting them handle different types of cases.

(c) In distributing Judge shall consider the following

*Facts to be
considered
in
distributing
cases*

main facts in distributing Criminal Cases.

(1) The State or Divisional Judge, Additional/ Deputy/ Assistant State or Divisional Judge in charge of District or the Township Judge shall try the important cases and complicated cases himself.

(2) The State or Divisional Judge or Judge in charge of District or Township Judge should distribute new cases only after considering the number of pending cases at his court and that of his subordinate Judges.

(3) Though number of pending cases should be considered as one criterion, special care should be taken in distributing cases which can be disposed of in a day and which would take a lot of Magistrates time.

(4) To distribute cases in accordance with the jurisdiction and power of the Assistant Judges-important cases to the experienced Judge **and** petty cases to the inexperienced Judge.

(5) To ~~distbriute~~ distribute cases which are likely to be contested appropriately in **order to gain** judicial trial experience to the Assistant Judges. In doing **so he** shall consider the number of contested pending before such Judge.

(6) By giving chance to handle and try various kinds of cases and make competent Judges of his subordinator, the Distributing shall distribute suitable case to them.

(D) So as there shall be no delay in **distribution** civil cases, the State Judges or the Divisional **Judges** or the *distributing of civil cases* Judges in charge of District or the Township Judge shall carry out as follows: -

(1) To accept petitions and applications at the appointed hours of office hours and the important applications after recess.

(2) To issue office order assigning duty to a suitable Judge or Judicial officer of accepting application and petitions in temporary absence.

(3) To make arrangements so as to reach the trial Judge the petitions or applications within part of an hour.

(4) The Distributing Judge shall make the list of petitions or applications to whom they are distributed.

(5) The Judges shall make list petitions according to type of suits of those they received for disposal and if they cannot actually dispose of them efficiently they shall report to their State Judges or Divisional Judges or Township Judge mentioning reasons therefor.

368. The name of post, rank and Jurisdiction of Judges.

(a) The names of posts and ranks of the Judges at the State or Divisional Court (the State or Divisional courts stationed at the Headquarters of a District) are defined in accordance with their responsibilities as follows: -

(1) The State Judge or the Divisional Judge.

(2) The Additional State Judge or the Additional Divisional Judge.

(3) The Deputy State Judge or the Deputy Divisional Judge.

(4) The Assistant State Judge or the Assistant Divisional Judge.

(b) The names and ranks of the Judges at the Township court are defined in accordance with their responsibilities, as follows.

(1) The Township Judge.

(2) The Additional Township Judge.

(3) The Deputy Township Judge.

Remarks. This is just a complete statement of names and ranks in accordance with the Courts. The subordinate judges are not kept where it is not necessary in relation to volume of work.

CHAPTER XVI.

PREVENTIVE LAW.

Security for **Keeping** the Peace.

VIII

369. A Magistrate of **the third class** or a Magistrate of the second class, **not being** a Subdivisional Magistrate, has **no power** to require any person to execute a **bond to keep** the peace under section 106, or **section 107**.

Procedure of Magistrate of second or third class.

In cases falling under section 106 **such a** Magistrate should forward the accused to the District or **Subdivisional** Magistrate to whom he is subordinate. In cases falling under **section 107** such a **Magistrate may** issue a warrant for the arrest of **the accused** and may **send him up to be dealt** with by the District or **Subdivisional** Magistrate to whom he is subordinate, or by any Magistrate of the first class. He must **record** the reasons for his action and **send** a copy of them with the accused.

349.
107 (3).

106.

370. No person can be bound down to keep the peace under section 106 unless he is convicted of one or other of the offences specifically mentioned in that section, or of some other offence involving a breach of the peace, or of abetment of any such offence.

Procedure under section 106.

120 (1).

371. If the accused is sentenced to imprisonment, the period for which security is required runs from the date of expiry of sentence.

107 (2).

372. A miscellaneous proceeding should not be opened in cases **falling** under section 106. The proceedings should continue in the **regular** trial.

373. No Magistrate can demand security for **keeping** the peace under section 107 unless **either** the person concerned **or** the place **where** disturbance is apprehended is within the **local** limits of the

Procedure under section 107.

Magistrate's jurisdiction. But no Magistrate **other than** a District Magistrate can proceed under this section unless **both the person and** the place are within his local jurisdiction. In **case where** a Subdivisional Magistrate or Magistrate of the first class wishes proceedings taken under this section, and either the person or the place is beyond his jurisdiction, he should report the matter to the District Magistrate under sub-section (3), and may arrest the person concerned and send him to the District Magistrate.

Security for Good Behaviour.

108. **374.** It should be noted that proceedings under section 108
 Proceedings against the Editor, etc., of registered publica-
 against editor of tions require the sanction of the President of
 newspaper. the Union.

375. Prosecutions under section 110 in regard to persons who
 Unconvicted have never before been convicted should not
 offenders. be very readily sanctioned. In such cases Mag-
 istrates should take great care to test evidence
 for the prosecution and to assure themselves beyond reasonable doubt
 that the accused is really an habitual offender of the class named.
 They should not rest satisfied merely with bare statements that the
 accused is reputed to be an habitual offender.

112. **376. (1)** No person should be called upon to give security
 Information. except upon credible, clear and substantial in-
 formation. Although a police report is cred-
 ible information, Magistrates must not take action too readily upon
 such reports. It is not sufficient ground for calling upon any person to
 give security for good behaviour that he drinks, or consumes opium,
 or gambles, or has a bad reputation, or lives on his relations, having
 independently of relations no ostensible means of livelihood, or al-
 lows a man who has been convicted of theft to live in his house. But
 persons who earn their living, wholly or in part, by unlawful gaming
 may be called upon to give security under section 17 of the Gam-
 bling Act, and those who earn their living, wholly or in part, by un-
 lawful manufacture, transport, importation, exportation, sale or pur-
 chase of opium or any excisable article or by abetting such unlawful
 manufacture, transport, importation, exportation, sale or purchase of
 opium or any excisable article may be called upon to give security
 under section 3 of Part II of the Opium Act, or section 64-A of the
 Burma Excise Act, as the case may be.

110.

(2) Credible information against habituals under section 110 must show that the person informed against is leading an habitually dishonest life and, in the sense, is dangerous to society. The mere fact of a previous conviction for an offence or previous convictions for offences is not sufficient to justify a Magistrate in taking action under section 110, unless there is some additional evidence to show that the person complained against has done some act, or has resumed habits, indicating an intention on his part to return to his former course of life. Again, after the expiration of a term of security some new proof of bad livelihood or of the fact that the person is not capable of following any honest calling is necessary before fresh security may be demanded.

377. Security for keeping the peace for good behaviour should
 Proceedings against
 Persons undergoing
 Imprisonment.

not be demanded from a person who is already undergoing a sentence of imprisonment for a criminal offence. Proceedings already commenced against such prisoner may, if the circumstances justify it, be renewed after his sentence for the criminal offence has expired.

117 (5).

378. The power to deal with more than one person in the same
 Joinder of trials. enquiry should be used with discretion and only when it is quite clear that section 117, sub-section (5), properly applies.

379. Before an order under section 112, Criminal Procedure
 Evidence must be
 recorded

Code, calling upon a person to find security can be confirmed, the truth of the information upon which the Magistrate has acted must be enquired into and such further evidence as may be necessary taken. The mere readiness of such person to give security does not justify the Magistrate in confirming his order without complying with the requirements of section 117 of the Criminal Procedure Code.

380. No person ought to be proceeded against under both sections 109 and 110 of the Code of Criminal Procedure in the same proceeding. When action is taken under section 110 the question of having ostensible means of subsistence should be excluded from the preliminary order.

118. **381.** In fixing the amount of security, a Magistrate should consider the station in life of the person concerned, and should not demand more security than such person might reasonably be expected to furnish.

123(4) **382.** Only on the failure of a person to give security when called upon to do so does the law authorize imprisonment. He should not therefore be sent to jail forthwith on the order requiring security being passed. A reasonable time should be allowed, within, which to furnish security.

383. The period for which imprisonment in default of giving security is ordered must coincide with the period for which security is demanded.

384. The amount of the bond for which the surety, if there is only one, should be rendered liable, or the sureties, if there are more than one, should be jointly and severally rendered liable, should be the same as that in which the accused is bound down.

385. The character and class of sureties should be specified both in the preliminary order under section 112 and in the order under section 118, Code of Criminal Procedure.

Before any person is accepted as a surety for good behaviour the Magistrate should satisfy himself that that person is of good character, is able to pay the penalty in the bond and lives in a place where he is likely to be able to exercise some supervision over the conduct of the suspect.

386. Officials of the Court, or the near relations of such officials should not be accepted as sureties, unless they are nearly related to or are near neighbours of, the person called upon to give security.

No person shall be accepted as a surety in any case who is known or believed to be making a profession of becoming surety for others in consideration of payment.

387. When a Magistrate makes an order under section 118 of the Code of Criminal Procedure requiring a person to give security for more than one year, the Magistrate himself has no power to pass any order for imprisonment in default of the security being given. If the person does not or cannot give the required security, the Magistrate must submit the proceedings to the Sessions Judge with the respondent if he is in custody, and if he is not in custody must issue a warrant for the detention of the accused pending the orders of the Sessions Judge.

The Proceedings in such a case are not laid before the Sessions Judge for confirmation of an order, but for the purpose of his passing an order himself under section 123 (3) of the Criminal Procedure Code.

388. Before dealing with a reference under section 123 sub-section (2), of the Code of Criminal Procedure, the Sessions Judge is bound to fix a date for the hearing and to give reasonable notice to the person concerned and to hear him if he wishes to be heard either personally or by a pleader.

389. A person committed to jail for failure to furnish security can be released only by order of the Court by which the security was required or of the District Magistrate. When a Sessions Judge, under section 123, leaves the order of the Magistrate demanding security unaltered and merely directs the imprisonment of the accused till security is furnished, the Magistrate may accept security if tendered.

When a Sessions Judge passes a fresh order demanding security, the acceptance of the security rests with him. But sureties may be tendered to the Magistrate who dealt with the case, who should send on the application with a report to the Sessions Judge.

390. Section 117, sub-section (3), enables a Magistrate acting under section 107, 108, 109 or 110 to make an ad interim order for security during the pendency of the inquiry in certain cases.

391. Section 17 of the Gambling Act, section 3 of the Opium Act, Part II and section 64A of Burma Excise Act, contain provisions for demanding security for good behaviour from persons who earn their living, wholly or in part, by unlawful gaming and by illicit dealing in opium and excisable articles, respectively. (See paragraphs 823 and 836.) ♦

Surveillance of Criminals.

392. All Sessions Judges, District Magistrates, Subdivisional Magistrates and Magistrates of the first class are empowered, under section 565, to pass orders of surveillance against previously convicted offenders. Attention is invited to the rules made by the President of the Union under that section, published in Judicial Department Notification No. 33, dated the 25th January 1902. Special attention is directed to Rule 1, which requires the order under section 565 to be entered on the warrant of imprisonment (*cf.*, paragraph 706).

Public Nuisances and Disputes as to Immoveable Property.

393. District Magistrates and Subdivisional Magistrates have powers under section 133, 143, 144, 145 and 147 without special investment. All magistrates of the first class have powers under sections 133, 145, and 147 without special investment. No under Magistrates, can have powers under sections 133, 145 and 147.

Any Magistrate may be invested by the President of the Union or the District Magistrate, with powers under section 143, and any Magistrate except a Magistrate of the third class, may be empowered by the President of the Union or the District Magistrate to act under section 144.

No Magistrate other than a District Magistrate or Subdivisional Magistrate can have powers under section 148.

In proceeding under these chapters, the prescribed procedure must be strictly observed. Magistrates must avoid proceeding under these chapters in matters which ought to be considered by a Civil Court.

♦ The Gambling Law (The Pyithu Hluttaw Law No. 6/1986) repealed The Gambling Act, 1899. The Repeal of Laws (The State Law and Order Restoration Council Law No. 1/1992) repealed The opium Act.

394. Magistrates acting in the exercise of their jurisdiction under section 144 of the Criminal Procedure Code must comply fully with the provisions of sub-section (1) of the section, which require that the written order would state the material facts of the case and that it should be served in the manner provided by section 134 of the Criminal Procedure Code. A proceeding under section 144 is a judicial proceeding and as such is subject to the revisional jurisdiction of the High Court (see *Thakin Ba Thaung v. King-Emperor*, Indian Law Reports, 12 Rangoon 283). It is essential, therefore, that the written order should state in full the material facts, and the grounds which the Magistrate considers to be sufficient to justify him in proceeding under the section in order that the High Court may be in a position to determine whether the order has issued in the exercise of a proper judicial discretion. Attention is directed in this connection to the judgment in *Aung Bala v. The District Magistrate, Rangoon*, (1939 Rangoon Law Reports 294).

An order passed under section 144 of the Criminal Procedure Code is to be served in the manner provided by section 134. That is to say, it must be served in the manner provided in the Code of Criminal Procedure for the service of a summons, and if it cannot be so served, it must be published in the manner provided in the Government's Judicial Department Notification No. 305, dated the 21st September 1939, and copies thereof must be posted at such place or places as may be fittest for conveying the information to the person or persons to be served or to the public, as the case may be. In every case the record of the proceedings must show clearly in what manner the order has been served.

CHAPTER XVII.

PROCEDURE IN GENERAL - CONDUCT OF TRIALS.

Arrest.

395. When a person for whose arrest a warrant has been issued cannot be found after a reasonable search, the officer to whom the warrant is addressed shall not return it to the Magistrate, but shall send a report stating the facts, and asking for orders whether to return the warrant or not.

Warrant of arrest.

If the warrant contains a direction to take bail, the report shall be submitted so as to reach the Magistrate not later than the morning of the day fixed in the warrant for the appearance of the accused.

396. The President of the Union has ordered that in the event
 Intimation to Foreign Embassies concerned of the arrest of their employees. of the arrest of an employee of a foreign Embassy intimation is to be immediately given to the Embassy concerned.

397. It is by no means necessary that a police-officer should
 Mode of effecting arrest. in arresting an accused person immediately proceed to put handcuffs on him, or to tie him with cord or chain. Such articles are used as means of restraint, and their use can only be justified under the provisions of sub-section (2) of section 46 of the Criminal Procedure Code, or under the general provisions contained in section 50 of the same Code.

When the offence against an accused is a bailable offence, the police have no authority to attempt to put handcuffs on him on the first instance, and would only be justified in using them if for some special reason there had been reasonable grounds for believing that he, after a proper arrest, would attempt to escape and was likely to do so, or he could not be got to go to the police-station except by such amongst other means.

Trivial resistance to unlawful force on the part of an arresting officer does not constitute an offence under section 224, Penal Code.

It is highly important that Magistrates should check any abuse by police-officers of their powers and should insist on the plain provisions of the law being carried out. It is obvious that the abuse of the use of handcuffs may be made the means of very great oppression by unscrupulous officers.

Proclamation and Attachment.

398. (1) An accused should not ordinarily be proclaimed under section 87 unless and until the Magistrate, after recording evidence under section 512, finds that there is *prima facie* proof of the offence.

88(6A)(6E)

(2) When any claim is preferred or objection made to property attached under section 88 as being the property of a proclaimed offender it must be inquired into by the attaching Court, provided the claim is made within six months of the date of the attachment. An order made after such inquiry is conclusive, save for the right of the claimant to file a civil suit to establish the right claimed under section 88, sub-section (6d).

Searches.

96, 98, 99A,
100.

399. (a) A search-warrant under section 96 or 99A can be issued by any Magistrate. Under sections 98 and 100 a search-warrant can be issued only by a District Magistrate, Subdivisional Magistrate, or Magistrate of the first class.

(b) Care should be taken not to issue a search-warrant under section 100 for persons alleged to be wrongfully confined until the Magistrate is convinced that a *prima facie* case exists for action under this section. In the majority of cases in which the wrongful confinement does not fall within the terms of the definition in section 340, Penal Code, there is a civil remedy.

165

400. A police-officer making an investigation may, without a search-warrant, under the provisions of section 165, cause search to be made for anything necessary for the purposes of an investigation into any offence which he is authorized to investigate. He may by order in writing, delegate his powers to conduct such search to any officer subordinate to him.

102, 103

401. The provisions of sections 102 and 103 apply to all searches. The provisions of section 103 must be strictly complied with. Any material irregularity in the conduct of a search appearing at a trial should be brought to the notice of the District Magistrate by the trying Magistrate.

A police-officer conducting a search can by order in writing, compel a person to act as witness of the search.

402. The attention of all Sessions Judges and Magistrates is invited to the last sentence of subsection (2) of section 103, of the Code of Criminal Procedure, which reads, "but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it."

The plain provision of law is frequently disregarded with the result that witnesses of searches are illegally and unnecessarily brought to Court, trials prolonged and expenditure on account of diet and travelling allowance of witnesses unnecessarily increased.

Remands.

403. (1) When the police apply to have an accused person remanded under section 167 of the Code of Criminal Procedure, they need not send up the complainant or any witness. They must send the accused person to the Magistrate, and must send with him an application in *Police Form 32*, and a copy of all the special diaries in the case up to the date on which the remand is applied for. No remand can be ordered until the accused has been brought before the Magistrate and had an opportunity of showing cause against it.

167 (2). (2) Remands into police custody, under section 167 (2), cannot be granted by a Magistrate of the third class.

167 (2). **404.** Section 167 empowers the Magistrate to authorize detention in such custody as he thinks fit. The remand should ordinarily be to jail, if there is a jail in the subdivision. If there is no jail the remand should ordinarily be to the police-station at the headquarters of the subdivision or township. Detention in an outlying police-station or outpost or any other place should not be authorized except in cases of real necessity, as for instance, where there is reason to believe that the accused can point out stolen property or materially assist in elucidating a case or bringing other offenders to justice. In every case the place in which the accused is to be confined shall be specified in the Magistrate's order and warrant.

167 (3).

405. (1) The Magistrate shall record on the back of the application, with his own hand, his order, and the reason for ordering detention. He shall also

Reasons for granting remands. record his reasons for the particular place of detention he has selected, if that place is not a headquarters station, or if it is not the jail in cases where a jail is available.

(2) The reasons for granting a remand must be definite. A bald statement that the police want time to examine witnesses is not sufficient. The facts which give rise to the suspicion that the accused has committed an offence, and the direction in which further investigation can be made, should be specified.

406. When an accused person is remanded a note should be endorsed by the Magistrate on the police case diary stating the fact that a remand has been ordered and the date to which the accused is remanded.

407. If the police investigation is completed within the time allowed under section 167, a remand should not be granted on the ground that the complainant or accused is in hospital, or that the witnesses are absent, or that time is wanted to arrest another accused in the same case, or any similar ground. In such cases the duty of the police is to submit the charge sheet at once under sections 170 and 173, Code of Criminal Procedure, leaving it to the Magistrate to postpone the commencement of the trial under section 344, if necessary.

408. The Magistrate should retain the application, and issue a remand warrant to the police in Form Criminal 71. If the accused is subsequently sent up for trial this warrant should be attached to the charge sheet and should be placed by the magistrate on the process record. If he is not sent up for trial it should be returned to the Magistrate who issued it, with an endorsement when the accused is released.

Filing of remand order.

409. Applications for remands under section 167 shall not be registered. They shall be kept in a current file of the year in which they are received. If the accused is not sent up for trial, the remand warrant, when returned, shall be placed in this file next to the application on which it was issued.

Remand orders being kept in a current file of the year should be treated as correspondence and destroyed after three years (Rule 12 of paragraph 1190.)

167 (2). **410.** No remand under section 167, Code of Criminal Procedure, may be ordered for more than fifteen days counted from the date of production. Cases of illegal detention in police custody are far too frequent. Whenever an accused person is produced before a Magistrate under section 170 the Magistrate should ascertain whether the period spent by the accused in police custody was legal, and if it was not, should submit a report to the District Magistrate.

411. If the accused is remanded to a jail, and is released without trial, an intimation of his release should always be sent by the Magistrate to the officer in charge of the jail.

Intimation to jail on
release of accused.

Inquests.

174. **412 . (1)** An investigation into the circumstances of a sudden or suspicious death, within clause (a), (b) or (c) of section 174 (1), must always be held.

176 (2) It is obligatory on the nearest Magistrate empowered to hold inquests to hold an inquiry into the cause of death of any person who dies while in the custody of the police, and also, unless a first information report has been recorded under the provisions of section 154, of any person who dies under circumstances falling within clause (a), (b) or (c) of section 174(1). At the conclusion of the inquiry the Magistrate is bound to come to a finding as to the cause of death.

Cognizance of Offences.

190-192.

413. Section 190 of the Code of Criminal Procedure prescribes in sub-section (1) the three modes in which a Magistrate may take cognizance of an offence. It should be noted that only Magistrates holding the offices specified in sub-section (1) and other Magistrates specially empowered under sub-sections (2) and (3) can take cognizance of offences. Any other Magistrate can try an offence only when the case has been duly transferred to him for trial under section 192, and when the offence is shown in Schedule I of the Code as triable by a Magistrate of his class.

414. When a Magistrate takes cognizance of an offence under section 190 (1) (c) he cannot himself try the offence if the accused objects to his doing so. The Magistrate must, under section 191, inform the accused of his right to object. The record must show that the accused has been so informed, and his statement in reply should be recorded.

But after a Magistrate has taken cognizance of an offence in one of the three methods in section 190, he gets the seizin of the whole case and his jurisdiction to bring every body concerned in the commission of the offence to justice for a cognizable offence is in no way restricted. If on a trial of a person sent up by the police for a cognizable offence, the Magistrate makes another person a co-accused, he exercises his powers under section 351 and not under section 190(c) of the Code of Criminal Procedure. Therefore he is not bound to transfer the case under section 191 of the Code [*Maung The v. Maung Chit Kywe*, (1940), R.L.R. 676].

Proceedings requiring Sanction or Complaint of a Public Officer or a Court, or a Specified Person.

195, 196,
196A, 197,
198, 199.

415. The provisions of section 190 are limited by section 195, 196, 196A, 197, 198 and 199, which provide that cognizance of certain specified offences can be taken only either on the complaint or certain specified authorities or persons or with the sanction or written consent of certain specified authorities. The provisions of these sections vary in detail and should be carefully studied. There are also in certain special or local Acts provisions that prosecutions for certain offences can only be instituted with sanction. In all such cases, the record should show that the proceedings have been instituted with the requisite authority.

416. The provisions of section 195 require special attention. Prosecutions for the offences specified in this section cannot be instituted on sanction. They can be instituted **only on the complaint** in writing of the public servants or Courts **specified** in the section.

Complaint in this paragraph means, complaint conforming to clause (h) of section 4 of the Code of Criminal Procedure which excludes a police report. Police charge sheet usually submitted to Courts by the police for all cognizable offences is not a proper complaint as required under section 195, Code of Criminal Procedure [*vide Jagdeo Panday v N.C. Hill*, (1938) R.L.R. 150].

476, 476A,
476B.

417. The making of a complaint by a Court is governed by the provisions of sections 476, 476A and 476B. Procedure on application to lay complaint.

In making such a complaint a Court may act either on its own motion or on application. In either case it should ordinarily hold a preliminary inquiry unless there is already on the record of the case in, or in relation to, which the offence is alleged to **have been committed**, sufficient material to render such inquiry **unnecessary**. In the absence of special reasons for **not doing so**, the Court should give the person against whom it is **proposed** to make a complaint an opportunity of showing cause why such complaint should not be made.

418. Courts should be careful not to institute proceedings under section 476 without good reason. On the other hand, Courts must not shrink from the trouble involved in the prosecution of offences against public justice and similar crimes. It is their duty to see that the law for ensuring respect for truth in matters of judicial evidence is not wantonly broken with impunity. But a complaint should not be made unless the evidence available is sufficient to make out a *prima facie* case, and there is a reasonable prospect of a conviction resulting from the prosecution. Necessity for exercise of discretion in laying complaint.

419. The complaint should set out all necessary particulars of the offence alleged and the person or persons by whom it is alleged to have been committed. There should be annexed to it a list of the witnesses who can give evidence for the prosecution and of the documentary evidence to be produced. If possible the documentary evidence should be sent along with the complaint.

420. In a complaint of the offence of giving false evidence the exact words which are alleged to be false should, if possible, be specified. In the case of contradictory statements, either of which must be false if the other is true, the exact words of both statements should be specified. When a complaint is made under section 209, 210 or 211 of the Penal Code and there is evidence that the person against whom the complaint is made has given or fabricated false evidence this offence also should be included in the complaint.

421. Private persons should not be allowed to conduct the prosecution in cases instituted under section 195, 196, 196A, or 197 of the Code of Criminal Procedure. In cases falling under section 198 or section 199 no person other than one competent to make a complaint should be allowed to conduct the prosecution.

196. 422. All Commissioners and Deputy Commissioners have been empowered to make or authorize the making of complaints of offences punishable under section 294A of the Penal Code*: but not of other offences mentioned in section 196. They cannot, however, dispose themselves of applications for leave to prosecute which relate to other than Chinese lotteries, and Deputy Commissioners cannot try cases for the prosecution of which they have given sanction.†

Procedure on Complaint.

423. Complaints should be received daily at a fixed hour at the commencement of the day's sitting.

* Home Department Notification No. 558, dated the 7th May 1897; 2 Rules Manual, 79.

† Government Circular No. 43 of 1897.

The District Magistrate may order that in a station where there are more than one Magistrate, complaints shall in the first instance be presented to one specified Magistrate, but such order shall not restrict a Magistrate's liberty to accept complaints when touring away from his headquarters.

424. In order to facilitate the classification of cognizable cases by the police, whenever a direct complaint of a cognizable case is made to a Magistrate, he should ascertain from the complainant whether any report of the case has previously been made to the police, and if he finds that this has been done, he should at once inform the District Superintendent of Police of the fact that a direct complaint has been made to the Court. The adoption of this procedure will enable the District Superintendent of Police to make the necessary arrangements for the disposal of the report made to the police.

200.

425. (a) When a Magistrate takes cognizance of an offence on complaint, he must, unless the complaint is in writing and he transfers it to a subordinate Magistrate,-

- (i) at once examine the complainant upon oath or affirmation;
- (ii) reduce the substance of the examination to writing;
- (iii) sign it; and
- (iv) cause it to be signed by the complainant;

but he is not bound to examine a complainant already examined by a transferring Magistrate.

(b) The examination of a complainant should not be a mere form, but an intelligent enquiry into the subject-matter of the complaint and the evidence producible in support of it, carried far enough to enable the Magistrate to determine whether there is or is not sufficient ground for proceeding. It is not sufficient that the complainant should merely speak to what is set out in his written complaint, but it must appear from his examination that the essential ingredients of a criminal charge are present and that there is a prospect of its being made out.

Especially is care necessary in cases wherein the dispute is of a quasi-civil nature concerning the possession of land or agricultural produce; such cases are sometimes contested at great length and often result in the unnecessary harassing of agriculturists and labourers when they are required for work on their fields.

202.

426. The power of referring complaints to the police for in-

Reference to Police.

vestigation should be exercised with discretion. Ordinarily an investigation should seldom be ordered except in cases where the offence charged is cognizable by the police and the complainant has not laid an information to them in the first instance.

A Magistrate of the third class has no power to refer a complaint to the police for investigation but he may hold a preliminary inquiry himself before issuing process.

203.

427. It is necessary for Magistrates to act on the provisions of section 203 and dismiss unfounded and illfounded complaints. They must briefly record their reasons for so doing.

428. The time and labour devoted by Magistrates to cases un-

Complaints of criminal
trespass.

der section 447 of the Penal Code is frequently out of proportion to their importance. In the majority of cases brought under this section the object of the complainant is to obtain in a cheap and speedy manner a remedy which ought to be sought by means of a civil suit. Magistrates are not authorized to dismiss complaints, or to discharge or acquit the accused, merely on this ground, because the facts which entitle a person to bring a civil suit may also constitute the offence of criminal trespass, but they should not allow prosecutions where the wrong is purely of a civil nature. In many cases where servants acting under their employer's orders enter upon land in the possession of another the ruling in *Shwe Kun v. King Emperor* (3 L.B.R., 278) is applicable. Such servants are not guilty of criminal trespass if they enter on the land in good faith in obedience to their employer's orders and without any intention of annoying the person in possession. A full and complete examination of the complainant and a careful consideration of the above and similar matters will enable Magistrates to dismiss summarily many more complaints of criminal trespass than they do, or in any event will enable them to discharge the accused after a brief hearing.

Compensation under section 545, Code of Criminal Procedure, should never be granted to a complainant when it appears that his object in instituting the prosecution was merely to assert a title to the land.

204.

429. Schedule II of the Code distinguishes, in column 4 the Nature of process to be issued. offences for which a summons and those for which a warrant should *ordinarily* issue in the first instance, and it is left to the discretion of the Magistrate to issue a summons instead of a warrant when he sees fit.

In exercising this discretion, Magistrates must be guided by the circumstances of each individual case, the main point for consideration being whether, having regard to the nature of the offence charged and the age, sex, position, etc., of the accused, his appearance can be secured or not without his arrest. For instance, it would very seldom be necessary to issue a warrant against a person of settled residence for an alleged offence under section 504, Penal Code.

430. When members of the Civil Police are prosecuted for Intimation to be given to the District Superintendent of Police regarding prosecution of members of the Civil Police. offences otherwise than under section 43 of the Police Act (*see* paragraph 812) intimation should be given to the District Superintendent of Police in all cases in which the prosecution is instituted on complaint or by the Magistrates *suo motu*. In the case of Subordinate Magistrates the intimation should be sent through the District Magistrate. The object of this instruction is to ensure that the Magistrate may, in deciding the case and in considering the sentence (if any) to be awarded, have an opportunity of taking into consideration the past record of the accused in the police and such other circumstances as the District Superintendent of Police may wish to urge in extenuation or mitigation of the sentence. [*cf.* paragraph 190 (6), Burma Police Manual, V Edition, 1940, Volume I.]

Charges.

19., 221.
240.

431. Chapter XIX of the Code should be read along with head
Contents of charge. XXVIII of Schedule V. The charge-sheet
should bear-

- (i) the seal of the Court;
- (ii) the name and office of the Magistrate;
- (iii) his powers;
- (iv) his territorial jurisdiction; and
- (v) the date.

432. The charge should state the offence with which the ac-
cused is charged, and if the law which creates
Statement of offence. the offence gives it any specific name the
offence may be described in the charge by that name only. If the law
which creates the offence does not give it any specific name so much
of the definition of the offence must be stated as to give the accused
notice of the matter with which he is charged; the law and section of
the law against which the offence is said to have been committed
must be mentioned in the charge.

433. (a) Under the provisions of section 221(7), Code of
Criminal Procedure, in every case in which
Charge of previous conviction. there are *prima facie* grounds for believing
the accused to have been previously convicted of an offence, by rea-
son of which previous conviction he is liable to enhanced punish-
ment or punishment of a different kind for a second or subsequent
offence, he must be formally charged with the previous conviction.
Form Criminal 82 should be used for this purpose. This rule applies
in all cases to which section 75 of the Penal Code or any other provi-
sion of law allowing enhanced punishment for a second or subse-
quent offence is applicable, even if the Court does not propose to
pass a sentence heavier than the maximum sentence allowed by the
substantive section under which the accused is charged. (*Cf.* para-
graph 644.)

(b) If the charge of the previous convictions is omitted
at the time when the charge of the substantive offence is framed, it
may be added at any time before sentence is passed.

(c) Examples of cases in which enhanced punishment may be awarded for a second or subsequent offence, other than under the Penal Code, are section 4 of the Metal Tokens Act, sections 11 and 12 of the Gambling Act, section 46 of the Burma Excise Act, and section 9D, Opium Act.

222. **434.** The charge must contain such particulars as to the time
 Particulars as to time, and place of the alleged offence, and the per-
 place and person. son, if any, against whom, or the thing, if any,
 in respect of which, it was committed as are reasonably sufficient to
 give the accused notice of the matter with which he is charged.

233. **435.** (1) For every distinct offence of which any person is
 Joinder of charges. accused there must be a separate charge and
 every such charge must be tried separately
 234. except in the cases mentioned in sections 234, 235, 236, and 239;
 three offences of the same kind committed within the space of twelve
 months may be tried together.

233, 234,
 235. (2) Special attention is directed to the provisions of the
 Code concerning the joinder of charges. Misjoinder altogether in-
 validates the proceedings.

436. Attention is invited to section 222 (2), which contains a
 Charge of criminal special provision concerning charges of criminal
 breach of trust, etc. breach of trust or misappropriation.

437. The attention of all Magistrates is drawn to the necessity
 Form of charge of for care in framing a charge of murder under
 murder. section 302 of the Penal Code. The charge of
 such an offence should read simply:-

'That on at you committed murder by
 causing the death of'. Such
 words as 'knowingly' or 'intentionally' should not be inserted. The
 insertion of such words is wrong and makes the charge illegal.

438. (1) If at the close of the case for the prosecution it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged *in the alternative* as laid down in section 236. Alternative charges cannot be combined together in one head of charge. If it is desirable to charge the accused in the alternative two separate alternative charges must be framed.

(2) Where alternative charges have been framed, at the end of trial the Magistrate must come to a distinct finding as to the facts of the case. The Magistrate cannot compromise his doubts as to the true facts by convicting the accused in the alternative. A conviction in the alternative is only possible where there is a doubt as to the law applicable to a certain set of facts which have been proved.

(3) If the accused is charged with only one offence, and at the conclusion of the trial it appears from the evidence that he committed another offence for which he might have been charged under section 236, he may, under section 237, be convicted of the offence which is proved to have been committed by him, although he was not charged with it, *provided that* the facts which the accused would have to meet on a charge for such offence are the same as on the offence actually charged.

238. **439.** So also, when an accused is charged with an offence, *e.g.*, murder, and the evidence only establishes a minor offence, (say) culpable homicide not amounting to murder, or voluntarily causing grievous hurt, the accused may, under section 238, be convicted of the minor offence though not charged with it.

240. **440.** Even when more charges than one are made against the same person, and a conviction has been had on one of them, it is not necessary that the Court should proceed to convict or acquit on the remaining charges. Under section 240 the officer conducting the prosecution may withdraw the remaining charges, or the *Court may of its own motion stay the trial* on such charges, and therefore need not pass any order of conviction with respect to them.

Summons Cases.

242, 243.
244, 245.

441. In the trial of a summons case by a Magistrate the following procedure must be observed. The opening proceedings should be recorded on Form Criminal 73:-

Procedure in summons cases.

- (i) the particulars of the offence of which he is accused must be stated to the accused, such particulars being shown on the proceeding itself and not by reference to some other paper and
- (ii) the accused must be asked if he has any cause to show why he should not be convicted; but
- (iii) it is not necessary to frame a formal charge;
- (iv) if the accused admits that he has committed the offence of which he is accused, his admission should be recorded as nearly as possible in the words used by him; and
- (v) if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly;
- (vi) if the accused does not make such admission, or the Magistrate does not convict him under section 243, the Magistrate must proceed to hear the complainant (if any); and
- (vii) take all such evidence as may be produced in support of the prosecution; and also
- (viii) hear the accused, or, if the accused does not wish to give evidence on his own behalf, examine the accused; and
- (ix) take all such evidence as he produces in his defence;
- (x) take any other evidence he may of his own motion cause to be produced.

XX, 244.

442. It is in the discretion of the Magistrate to summon witnesses for the parties, and he may require their reasonable expenses to be deposited before

doing so. He should see that material evidence is not shut out through the mere ignorance or want of means of either the complainant or accused. The record should show what takes place with respect to the summoning of or refusal to summon witnesses.

There is no provision of law obliging a party to the proceedings to make a written application for the summoning of witnesses or to put in a written list of witnesses.

247. 443. If on the day fixed for hearing, the complainant, where
 Absence of complainant. the case has been instituted on complaint, does
 not appear, the Magistrate is *bound* to acquit
 the accused, unless for some reason he thinks proper to adjourn the
 hearing to some other day or unless the complainant is a public serv-
 ant whose personal attendance is dispensed with by the Magistrate.

205. 444. (1) Under the provisions of section 205, when a sum-
 mons for the attendance of the accused is issued the Magistrate may
 dispense with the personal attendance of the accused and permit him
 to appear by pleader. Without such permission the accused is not at
 liberty to absent himself on any date fixed for hearing of the case.

(2) The complainant is not obliged to attend if he wishes
 to abandon the prosecution, unless he has been expressly required to
 attend as a witness.

Warrant Cases.

252. 445. In warrant cases the opening proceedings should be re-
 Procedure in warrant cases. corded on Form Criminal 73. The Magistrate
 must proceed to-
- (i) hear the complainant (if any), and
 - (ii) take all such evidence as may be produced in sup-
 port of the prosecution.

254. **446.** (1) If, when all the evidence for the prosecution has been taken or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and which can adequately be punished by him, he shall frame in writing a charge against the accused.

255. After the charge has been framed it must be read and explained to the accused and he must be asked if he is guilty or has any defence to make.

255. **447.** If the accused pleads guilty, the Magistrate must record the plea and may in his discretion convict him thereon.

448. (1) If the accused refuses to plead to the charges, or claims to be tried, he must be asked whether he wishes to cross-examine any of the witnesses for the prosecution. The record should show that the accused has been asked this.

As soon as a charge is framed against the accused and he has pleaded thereto, he is required to state *forthwith* whether he wishes to cross-examine any of the prosecution witnesses already examined.

(2) The intention of this provision is not to prevent cross-examination as the case proceeds. An accused cannot be compelled to cross-examine witnesses for the prosecution before he has been charged. But he should be permitted and encouraged to do so at the close of the examination-in-chief of each witness.

449. Magistrates ought not to wait till the prosecution case is completed before framing a charge against the accused. The moment the stage has been reached when there is sufficient evidence for presuming that an accused person has committed an offence triable under the charge, the charge sheet should be drawn up. The framing of the charge does not automatically close the case for the prosecution. The remaining witnesses for the prosecution should be examined, and, if necessary cross-examined and re-examined. Witnesses examined before the framing of the charge must of course be recalled for cross-examination if the accused demands their recall, but the accused has no right to recall prosecution witnesses examined after the framing of the charge.

The accused must state, immediately after he has pleaded to the charge, which prosecution witnesses already examined he wishes to recall for cross-examination.

253, 256.

450. (1) If a charge has been framed, after the examination, Evidence by or examination of the accused: cross-examination and re-examination of all the prosecution witnesses, including the cross-examination and re-examination of witnesses (if any) recalled at the request of the accused after the charge, the accused must be asked by the Magistrate whether he wishes to give evidence on his own behalf. If the accused decides to give evidence, he should be considered to be a defence witness on his own behalf and examined, cross-examined (subject to the provisos to section 342(1), and re-examined on oath in the same way as any other witness. If he decides not to give evidence, the Magistrate must examine him not on oath, under the provisions of section 342(2). Thereafter the evidence for the defence must be taken [see also paragraph 454 (1)].

(2) Where the accused has been discharged under the provisions of section 253, or has been convicted on his own plea of guilty under section 255 (2), the question of allowing the accused an opportunity to give evidence does not arise.

257.

451. It is the Magistrate's duty to ascertain the names of person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and to summon as witnesses such of them as he thinks necessary. He is also bound to issue process for the attendance of witnesses desired by the accused, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice, in which case the ground of the refusal must be recorded. A deposit of the reasonable expenses of a witness may be required before summoning him, but the circumstances of the accused should be considered before making this requirement. No written application for summoning witnesses and no written list of witnesses can be required.

*Summary Trials.*XXII.
260-265.

452. The power of trying certain offences in a summary way is intended generally to be exercised only in simple cases. Cases of intricacy or difficulty or importance from the points of law involved or otherwise, should not ordinarily be tried summarily. If a longer record than that prescribed for a summary trial is called for in any case, the case should be tried regularly according to the ordinary procedure. (See also paragraph 615.)

453. Directions concerning summary trials by Benches of Magistrates are given in paragraph 366.

Evidence by and Examination of Accused.

342 (1).

454. (1) In all cases, whether tried regularly or summarily, and whether tried by a Magistrate or by a Court of Session, and whether a summons case or a warrant case, the accused is a competent witness on his own behalf and shall, if he so desires, be examined on oath as a witness in the same manner as any other witness. *But the accused cannot be examined as a witness except at his own desire.* Moreover an accused person is not a competent witness for the co-accused tried in the same trial and he cannot be examined as a defence witness for such a co-accused [*Poonatu v. The King*, (1947), R.L.R. 214].

(2) At the conclusion of the case for the prosecution, and when the accused is called upon to enter upon his defence, the Magistrate or Judge must ask the accused whether he desires to give evidence on his own behalf or not and must warn him in the manner required by proviso (b) to section 342(1). If the accused desires to give evidence he should be examined as a witness before the witnesses for the defence (if any). The restrictions on the evidence of the accused and the questions which may be asked him, which are contained in the provisos to section 342 (1) must be carefully observed.

342 (2).

364

(3) If the accused declines to give evidence on his own behalf the Magistrate or Judge must examine him, after the prosecution case is closed and before he is called upon to enter upon his defence, FOR THE PURPOSE OF ENABLING HIM TO EXPLAIN ANY CIRCUMSTANCES APPEARING IN EVIDENCE AGAINST HIM.

364. It is not permissible to examine the accused for ANY other purpose. Questions in the nature of cross-examination to elicit the truth are forbidden. Such examination shall NOT be on oath. Examination of the accused for the same purpose is optional at any previous stage of the case, but in practice it will be found superfluous in almost every case. The examination must be recorded in the manner laid down in section 364.

Right of Accused to be defended.

342. 455. (1) Every person accused may of right be defended by a pleader.

(2) * In exercise of the powers conferred by section 561A of the Code of Criminal Procedure, the High Court, Rangoon, has made the following rules requiring Pleaders appearing in Criminal Cases to file stamped powers of attorney :-

Filing of Powers by
Pleaders.

- (i) No pleader shall act for any person in any Criminal Court unless he has been appointed for the purpose by such person by a document in writing signed by such person.
- (ii) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the case are ended so far as regards the client.
- (iii) For the purpose of rule (2) any application for revision, any appeal from any judgment or order in the case, and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the case or of obtaining refund of monies paid into the Court in connection with the case shall be deemed to be proceedings in the case:

* High Court Notification No.2 (General), dated the 16th February 1927.

Provided that nothing in these rules shall be deemed to apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party:

Provided further that nothing in these rules shall be deemed to apply to any pleader appearing in any Court on behalf of a prisoner in jail or other person in duress or under restraint by any Court or its officers, who produces a written authority signed by such prisoner or person in the presence of the jailor or any other officer in whose custody he is.

Note : Under section 4 (1) (r), Code of Criminal Procedure, the term "pleader" includes an advocate of the High Court.

456. The President of the Union has sanctioned the adoption of the following rules for the defence of soldiers charged with criminal offences and prosecuted by Government in Civil (as distinguished from Military) Court * :-

Defence of soldiers
charged with criminal of-
fences.

Rules.

(1) When soldiers are to be tried by a Civil Court (*i.e.*, a Court which is not a Military Court) upon any criminal charge, the local Military authorities (**General Officers** Commanding Districts) should consult the District **Magistrate** and arrange with him for the selection and remuneration of an **Advocate** or a Pleader, as the importance and necessities of the case may require.

(2) The fee to be paid to the **Advocate** or Pleader must not exceed K 100 per diem when the trial is before a High Court, and K50 per diem in all other cases.

(3) It is to be clearly understood that the local authorities are only to appoint an advocate or a pleader in cases where they think it desirable, and are to fix the fee beforehand (subject to the maximum amounts stated above) at whatever sum may be reasonable, with reference to the customary rates of the localities concerned.

* Judicial Department Circular No. 11 of 1893.

(4) The expenditure incurred will be a military charge.

(5) These rules apply to troops, including regimental warrant officers and all regimental non-commissioned officers and private soldiers. They do not apply to soldiers on leave when at their homes, but do apply to reservists of the Army when called out for training or service.

Engagement of Advocates or Pleaders at Government expense on behalf of poor persons accused of offences punishable with death. † ❖

457. (1) In every case in which a person is accused of an offence punishable with death the committing Magistrate, before forwarding the committal record to the District Magistrate, will record in the diary-sheet whether the accused was represented by an Advocate or a Pleader in the proceedings before him. He will also record his opinion whether the accused or his family can afford to engage legal assistance for his trial in the Court of Session, or the High Court as the case may be, giving the reasons of his opinion. The District Magistrate, on receipt of the report for the committing Magistrate, unless he considers that the accused or his family can afford to engage legal assistance, will proceed to engage an Advocate or a Pleader to appear for the accused in the Court of Session, or in the High Court as the case may be, offering a fee at the rate of remuneration prescribed in rule (6). The District Magistrate before forwarding the record to the Sessions Judge, or to the High Court, will note in the diary-sheet therein whether or not he has engaged an Advocate or a Pleader, stating the reasons for his action. Even when the Magistrate has found that the accused and his family have means enough, it is open to the High Court or the Court of Session to request the District Magistrate to provide legal assistance for the accused at the trial. The Session Judge may make a similar request to the District Magistrate when a further enquiry has been directed under section 375 of the Code of Criminal Procedure, or when a new trial has been ordered upon a charge of an offence punishable with death. The District Magistrate will in like manner provide legal assistance for such poor persons who are accused of offences punishable with death before other Courts and Tribunals empowered to try such offences and to pass a sentence of death.

† Ministry of Judicial Affairs "G" Circular No. 17 of 1949, dated the 3rd November 1949.

❖ The Attorney General's Office Direction No. 9/1988, dated 19-12-1988.

When an Advocate or Pleader is briefed, he is briefed for the whole case, that is till the final determination of the case by the trial Court. A person sent up for trial on a capital charge should be defended throughout the trial by the Advocate or Pleader engaged at Government expense even though the charge ultimately framed or altered to may be for an offence which is not punishable with death.

(2) In all cases Advocates or Pleaders should be engaged in sufficient time to enable them to receive instructions and to study the necessary documents. As soon as orders for the engagement of legal assistance have been passed, the Advocate or Pleader shall examine the committal record and decide what parts of the records he really requires to be copied to enable him to conduct the case properly. Copies of only such parts of the record as the Advocate or Pleader for the defence thinks really necessary should be supplied. Fees for the copies will be charged but paid by Government, provided that the District Magistrate is satisfied that the copies applied for are essential for the ends of justice.

(3) Superintendents of jails shall forward to the Registrar, Supreme Court, or the Registrar, High Court, all appeals to the Supreme Court, or High Court, from condemned prisoners who desire the Supreme Court or the High Court to provide legal assistance. If the Advocate or Pleader who has defended the prisoner at the trial has been engaged by Government he shall submit to the Registrar under sealed cover copies of the records and documents he has been furnished with under rule (2) together with his notes, and the Registrar shall deliver the same without breaking the seal to the Advocate engaged for the prisoner in the Supreme Court or the High Court.

(4) In the case of an appeal by the President against the acquittal of any person accused of capital offence the High Court will provide legal assistance for his defence on receipt of intimation from the President of the receipt of a report of the Commissioner of the Division under Rule 4 of Judicial Department Circular No. 30 of 1924 that such assistance is necessary.

(5) The Supreme Court or the High Court will provide legal assistance in all appellate proceedings for all condemned prisoners unable to provide themselves therewith and for the defence of respondents in similar circumstances who are called upon to show cause why a lesser sentence should not be enhanced to a sentence of death; and may provide legal assistance to such prisoners in references under section 374, Code of Criminal Procedure, or in enquiries held before the High Court under section 375.

(6) The following rates of fees are authorized for Advocates or Pleaders engaged under the preceding paragraphs :-

(i) Supreme Court or High Court - K75 for the first day and K 50 for each succeeding day.

(ii) Court of Session or any other Court or Tribunal empowered to pass a sentence of death - K50 per case, payable as soon as the Advocate or Pleader accepts the brief, and an additional fee of K 25 per diem for each day's appearance in excess of two, provided that the Court or Tribunal certifies that such appearance was necessitated either by the necessarily protected hearing of the case or by the unavoidable postponement of the hearing which could not reasonably have been foreseen by the Advocate or Pleader.

Daily rates are not to be paid for appearances merely to hear judgment.

It is an obligation of the Union to provide for the defence of accused persons at public expense. In providing for payment of fees on the above scale, the Government appeals to the tradition of the bar that the defence of poor persons is an act of merit on the part of Advocates and Pleaders, and trusts that the scale may receive ready acceptance, even though the fees may be less than those which would be paid by wealthy clients charged with grave offences.

(7) These orders do not contemplate the engagement of an Advocate or a Pleader to appear in any Court or Tribunal aforesaid in remote stations where there are no Advocates or Pleaders in residence, nor the engagement of an Advocate or a Pleader to appear in any case on behalf of the accused person in the preliminary inquiry held by the committing Court.

458. The advocates or pleaders engaged by Government on behalf of poor persons accused of offences punishable with death should be required to examine the committal record, and to decide what parts of the record they really require to be copied to enable them to conduct the case properly in the Sessions Court. Copies of only such parts of the record as the advocates or pleaders for the defence think really necessary should be supplied.

Tender of Pardon to Accomplice.

337. **459.** Every case, where a person has accepted a tender of pardon under section 337, sub-section (1), and has been examined under sub-section (2), must be committed to the Court of Session or High Court for trial, unless the Magistrate inquiring into the case discharges the accused.

Postponements and Adjournments.

460. When an accused is brought before a Magistrate for enquiry or trial under section 170, section 344 is the law applicable to postponements. If at that time the investigation has been completed, the police report under section 173 must be forwarded with the accused. Whether the investigation has been completed or not, the Magistrate may direct a remand for any reasonable cause *e.g.*, the investigation being incomplete but there being sufficient evidence available to justify the accused being brought before the Magistrate. Even though some of the witnesses are present, the Magistrate may, in his discretion, postpone the commencement of the case and remand the accused if there is good cause for doing so, *e.g.*, where it is clearly desirable for the ends of justice to have all the witnesses for the prosecution examined on the same day or in continuous succession.

461. Section 344 does not require evidence for the prosecution to be taken in order to justify a remand, but it would be improper without cogent reason to harass the witnesses for the prosecution by not examining them all in continuous succession when they are produced.

462. It is not a reasonable cause of postponement under section 344, except for a short period, that there are other accused in the case for whose arrest it is considered by the Magistrate desirable to wait in order that all the accused may be put on their trial together. Such an order consults the convenience of the Magistrate and witnesses only whereas every accused has a right to have the evidence, against him recorded at as early a period as possible.

463. Sometimes grave delay occurs in Criminal cases owing to the fact that one or more of the accused are wanted simultaneously in different Courts either in the same or in different districts. To avoid such delays District Magistrates should issue instructions to the Police and to Jail Superintendents requesting them to arrange that the case of any accused person whose trial is pending in more Courts than one is at once brought to the notice of the trying Magistrate. On receiving such an intimation the trying Magistrate, if he cannot dispose of the case at once, should communicate immediately (if necessary by telegram) with the other Court informing it of the date fixed for hearing and the probable duration of the trial before him. The two Courts should then keep each other informed of their arrangements, and make every endeavour to dispose of the cases with due regard to each other's convenience. The name of any accused against whom cases in two or more Courts are pending should be specially brought to the notice of the District Magistrate *if either trial exceeds six weeks* from the date of his first appearance in Court.

464. The common practice of adjourning a case, because all
 Absence of witnesses. the witnesses for the prosecution or defence
 are not in attendance, is prohibited, except in
 cases where it may be sometimes desirable to postpone a trial or
 inquiry for a short period in order that, when commenced, it may be
 continuous and conducted in such order in regard to the examination
 of witnesses as may best set out the facts to be given in evidence.
 (See also paragraph 608)

465. Postponements, because an advocate or a pleader for the
 Absence of Advocate or prosecution or defence cannot attend when a
 Pleader. case is called or cannot remain throughout the
 time the Magistrate can devote to the case, should be most rare and
 ordinarily confined to the case of an advocate or a pleader being at-
 tacked by sudden illness on the day of hearing, incapacitating him
 from coming to or remaining in Court.

466. Similarly the practice is prohibited of adjourning a case
 Want of time. for days for want of time, and telling the wit-
 nesses to come again on another day. All
 Courts must bear in mind that the accused is entitled to have his case
 tried as early as possible.

If a case cannot be taken up on the date fixed every endeavour
 should be made to take it up on the following day.

In time of congestion of work in any Court, subordinate Mag-
 istrates should make an immediate report to the District Magistrate
 whenever they are forced by circumstances to adjourn a case, whether
 at the first or at any later hearing, for any period longer than 15 days.

467. The postponement of judgment after the hearing of a case
 is authorized in certain circumstances when the accused has another
 case pending against him. (See paragraph 701.)

468. When a case has once been adjourned without the ex-
 Precedence to be amination of the witnesses in attendance, it
 given to adjourned cases. should be given preference over other cases
 on the next day fixed for hearing.

469. A separate warrant is required with every under-trial prisoner forwarded to jail for confinement, and in the case of every under-trial prisoner who, after confinement in jail, is not sent back there for further confinement, an intimation should be forwarded to the officer in charge of the jail of his release or other manner of disposal.

470. In view of the desirability of maintaining in jails some records to explain unusually long detentions of under-trial prisoners for the information of official visitors and others, an entry of the cause of detention in the case of second remand should be made on the remand order issued under section 344 in Form Criminal 72.

471. X X X X X X X X X X X X X X X X X X X X X X
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472. In the event of more than one remand being necessary the original detention order should be returned to the Jailor on each occasion of the production of the prisoner for retention till the final disposal of the case.

473. District Magistrates are expected carefully to check detention in custody by the fortnightly returns of subordinate Courts in which pending cases have to be shown.

474. Whenever a convict is produced in Court from jail under an order in Form Criminal 54, if his further attendance on a later day is required, the Court shall send with the convict on his return to the jail a fresh production order in the above form; and shall also attach to that order a remand order in Form Criminal 72. A release warrant should not be sent in respect of a convict who has been produced under an order in Form Criminal 54.

* Judicial Department Notification No.2 , dated the 15th January 1964

Strictures by Magistrates and Judges on the Conduct of the Police.

475. (1) Allegations of tutoring of witnesses, of the manufacture or suppression of evidence, and of extorting confessions of guilt by threats or inducements, are sometimes adopted as the line of defence in the Criminal Courts of this country and it is inevitable that Court should express their opinion freely on such allegations. It is however essential, both for the maintenance of public confidence in the administration of justice, and also for the protection of the police-force, that judicial comments on such allegations should be carefully weighed, should not go beyond the evidence available, and should lead when necessary to adequate investigation.

The following general principles should therefore be borne in mind by Magistrates and Judges who consider that the evidence before them calls for strictures upon the methods employed by the police :-

(a) The misconduct to which attention is drawn in a judgment should be relevant to the case under trial. But matters which are not strictly relevant to the case but which have come to light in the course of the trial may be made the subject of a separate note.

(b) Such strictures should be expressed in restrained and temperate language and Judges and Magistrates should refrain from pre-judging the special enquiry which is to follow.

(2) Orders regulating the procedure to be adopted in the case of retracted confessions and alleged misconduct by the police are contained in paragraphs 571 and 605.

(3) In all cases where strictures are passes by Magistrates upon the conduct of the police, as disclosed in cases coming before them, whether in the judgment or in a separate note, a copy of the judgment or note shall be sent at once by the Magistrate to the District Magistrate concerned, or in Rangoon Town to the Commissioner of Police.

The District Magistrate will cause the allegations to be enquired into by a senior officer of police, or will direct a magisterial enquiry according as he may think fit, in accordance with the instructions contained in Police Department letter No. 10 - 7P. -6, dated the 4th March 1912. The Commissioner of Police, Rangoon, will take corresponding action.

(4) In Sessions trials where strictures are passed by a Court of Session or by the High Court, if the facts are not sufficient to warrant the immediate institution of criminal proceedings and if the Court is of opinion that an enquiry of a special nature (other than a departmental or police investigation) is necessary, a copy of the note or judgment embodying this opinion shall at once be sent to the District Magistrate. The District Magistrate will then report the matter by the ordinary channel for the orders of the President of the Union who will issue instructions for a public enquiry to be held by a Commission of officers and will appoint the officers for that purpose. Such a Commission will ordinarily consist of two officers not belonging to the Police Department one of whom has had judicial experience.

(5) In all other cases where strictures have been passed by a Court of Session or by the High Court, *i.e.*, where criminal proceedings or a special enquiry are not considered necessary, a copy of the note or judgment embodying the strictures shall be sent to the District Magistrate, who will either proceed as in sub-paragraph (3) above or if he considers it desirable, move the President of the Union to direct a special enquiry by Commission.

(6) Judges and Magistrates will seldom have the opportunity to investigate thoroughly the allegations made against the police in the course of trial. They will seldom have more than a *prima facie* case showing good grounds for enquiry. They should accordingly in such cases abstain from recording definite findings on accusations which are to be the subject of future special enquiry.

476. The provisions contained in paragraph 475 regarding strictures by Magistrates and Judges upon methods employed in the investigation of cases by Police Officers shall apply *mutatis mutandis* to Excise Officers.

The Use of Handcuffs and Leg-irons.

477. The President of the Union has issued the following instructions regarding the use of handcuffs and leg-irons of under-trial and convicted prisoners when they are produced in Court either to give evidence or to answer charges framed against them :-

- (1) When a prisoner is before a Court either on trial or as a witness, handcuffs should be removed unless
in Rangoon, the Court Police Officer
outside Rangoon, the prosecuting police-officer or where there
is no prosecuting police officer the senior police-officer in
charge of the case
 is of opinion, after consulting the police-officer in charge of the prisoner, that there is a reasonable expectation that the prisoner will use violence or that an attempt will be made to rescue him.
- (2) When a prisoner is brought to Court in leg-irons, the leg-irons should not be removed.

Sessions Judges and Magistrates should bring to the notice of the District Superintendent of Police or the Superintendent of the Jail any seeming departure from the rules which may be observed by them.

Composition of Offences.

478. Criminal cases can only be compounded in accordance with the provisions of section 345. In regard to the offences mentioned in sub-section (1) of section 345, if the complainant or informant desires to compound the offence composition must be allowed, and the Magistrate has no power to impose any condition.

In regard to the offences mentioned in sub-section (2), if the complainant or informant applies for permission to compound the offence the Magistrate may in his discretion either refuse or allow composition, and he may impose suitable conditions under which composition will be allowed. In cases concerning these offences the Magistrate is required to exercise a judicial discretion in refusing or allowing composition, and consequently it is necessary that before composition is allowed there should on the record sufficient materials on which that discretion can be exercised.

The order of the Magistrate allowing or refusing composition should always show that he has really considered whether the case is one in which composition should be allowed or not. Cases of offences not compoundable under either sub-section of section 345 can only be withdrawn under sections 494 and 495, and not by private prosecutors.

479. The attention of Magistrates is directed to the amendments to section 345, which have considerably reduced the number of compoundable offences.

Hurt.

480. Before granting permission to compound an offence, which is only compoundable with the permission of the Court, under sub-section (2) of section 345, the Magistrate should consider whether the complainant or informant, who has applied for composition, should not be required to pay the costs of the prosecution, or whether the accused himself should not be required to pay the costs, as a condition of allowing composition. Ordinarily the expenses of witnesses attending the Criminal Courts in cases sent up by the police are paid by Government, but it is hardly reasonable that the State should be burdened with such charges when the proceedings are brought to a termination by the complainant's or informant's own act or in consequence of an agreement entered into by him with the accused. (cf. paragraph 638).

Costs of prosecution.

Bail

497.

481. (1) In *non-bailable cases*, an accused person may, for reasons to be recorded in writing, be released on bail but he shall not be released on bail, if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

Provided that any person under the age of 16, any women or any sick or infirm person may be released on bail in any case.

482. The High Court or a Court of Session, acting under section 498, cannot admit a person to bail without first giving Government an opportunity of being heard.

483. The following instructions should be observed for the surveillance of accused persons, who have been released on bail, while they are present in Court for the trial of the cases against them:-

(1) *Police Cases* -

- (a) The accused must report to the Court Prosecuting Officer at 10-30 a.m., and the Court Prosecuting Officer should then search him and place him before the Magistrate.
- (b) Before the accused is charged he should be placed in the dock, and in non-bailable cases after the accused has been charged his bail bond should be cancelled.

(2) *Direct Cases.* - In direct cases the Magistrate may in his discretion direct that the same procedure shall be followed as in police cases.

(3) In any event, as soon as the Magistrate has decided to sentence the accused to a term of imprisonment, he should, before passing judgment in the case, inform the Court Prosecuting Officer, and have the accused arrested, searched, and placed in the dock. (See paragraph 48.)

Compensation, Costs and Rewards.

545. **484.** In passing judgment the Court may order the whole or any part of the fine recovered to be applied on three objects, namely:-

- (i) in defraying expenses properly incurred in the prosecution;
- (ii) in compensation for the injury caused by the offence committed where substantial compensation is, in the opinion of the Court, recoverable by civil suit,
- (iii) in certain cases, to innocent third parties, in compensation for injury or loss caused to them as a result of the conviction of the accused.

(b) Compensation should be freely and liberally granted when called for by the circumstances of the case, but should be stringently withheld in trivial and merely litigious proceedings.

546 A.

485. The provisions of section 546A, which on conviction of

Costs.

a non-cognizable offence in a case instituted upon complaint provide for an order directing the accused, in addition to payment of the fine, if any, imposed, to pay to the complainant certain expenses incurred by the latter should he carefully noted. Under this section only the Court-fee paid upon the petition of complaint, and the process-fees paid by the complaint for service of processes on the accused or on the prosecution witnesses may be included in the order. The subsistence and travelling allowances of witnesses or the stamp-fee paid on a pleader's power-of-attorney cannot be included. When a Magistrate passes an order for the payment of costs to a complainant under section 546A of the Code of Criminal Procedure he should state in his order the amount of costs to be paid. If, in crediting the amount recovered, the same chalan is used for both fine and fees, the amount of each must be separately stated.

250.

486. When the Magistrate discharges or acquits the accused

Compensation to accused for frivolous complaints.

and is satisfied that the accusation against him was false and either frivolous or vexatious, he should proceed under section 250.

In all proper cases compensation should be granted to persons subjected to false and either frivolous or vexatious complaints.

250 (1).

487. (1) If the Magistrate considers that compensation under section 250 should be awarded, he must in his order of discharge or acquittal, call upon the complainant to show cause against an order under that section, or direct the issue of a summons to the complainant to appear and show cause. After completion of the order of discharge or acquittal, the Magistrate has no power to open the case in order to call upon the complainant to show cause, or to order the issue of a summons to the complainant for that purpose.

250 (2).

(2) It is no longer necessary for the Magistrate to stay delivery of judgment until the complainant has stated his objections under sub-section (2). The Magistrate must record and consider any cause which the complainant may show against the order under section 250, but he may do this by a separate order passed after the order of discharge or acquittal of the accused has been made.

250 (2A). (3) An order awarding compensation under section 250 may provide that the complainant shall suffer simple imprisonment not exceeding 30 days in default of payment.

488. The procedure in paying out compensation or costs is prescribed in paragraphs 1047 and 1048 of Chapter XXIX.

489. (1) Criminal Courts must bear in mind that they have no power to grant rewards out of fines imposed by them unless authorized to do so by any legal enactment. The Penal Code confers no authority to pay any rewards out of fines. Rewards must also not be confounded with compensation granted under the provisions of section 545.

Rewards.

(2) In the absence of any special provision on the subject, an order for the payment of a reward out of a fine imposed by a Criminal Court should be made when passing judgment and not on a subsequent date, when the order would be illegal.

490. Rules for the offer and payment of rewards in criminal cases will be found in the Burma Police Manual, Fifth Edition, 1940, page 98.

491. With regard to the payment of rewards in excise and opium cases and in cases under the Forest Act, *see* paragraphs 869, 820 and 838.

Payment of Expenses of returning home to persons sent up for trial by the Police and acquitted or discharged.

492. The following instructions have been issued by the President of the Union as to the payment of travelling expenses to their homes to persons sent up for trial by the police and acquitted or discharged * :-

(1) The expenses shall be paid by order of the Court by which the accused person is acquitted or discharged.

(2) The payment shall be made only in cases in which the Court is satisfied that hardship would result if payment were not made. It shall be within the discretion of the Court to refuse payment, for reasons to be recorded in writing, in any case the circumstances of which are such that in the opinion of the Court payment should be withheld.

* Judicail Department Circular No. 61 of 1909.

(3) For the purposes of these rules account shall be taken of the distance from the Court to the place where the accused was arrested or where summons was served on him, or of the distance from the Court to the accused's home, whichever is less.

(4) Every accused person sent up for trial by the police may, on his acquittal or discharge, be given a sum of 25 pyas, whatever may be the distance from the Court to his home.

(5) In addition he may be given 13 pyas per diem, for his journey home. Fifteen miles in the case of a man, and ten miles in the case of a woman shall be considered a day's journey.

(6) Where the journey has to be made by railway or by steamer a sum of money equivalent to the cost of a railway or steamer ticket of the lowest class may be given in addition.

(7) Payment under Rules 5 and 6 shall be made only in cases where the accused on his acquittal or discharge has to proceed to a place not less than 15 miles distant from the Court, if the accused is a man, or 10 miles if a woman.

(8) Where it appears to the Court that the accused person is unable to travel on foot owing to illness or physical infirmity, he may be furnished with cart-hire for such portion of the journey as he may have to perform by road.

(9) Payment may be made under these rules in cases where an accused person is acquitted by an Appellate Court while on bail.

(10) All payments made under these rules will be debitable to the budget grant of contingencies of the Courts by which they are made.

The amount paid to the acquitted or discharged person should be entered in column 14 of Criminal Register 1 and his receipt taken there.

Payment of Expenses to enable indigent persons to return home after sentences of whipping have been inflicted upon them by a Magistrate of a Court at an outstation, where there is no jail.

493. Magistrates are authorized at their discretion to make payments, when necessary, to indigent persons in order to enable them to return home after sentences of whipping have been inflicted upon them at outstations where there is no jail. The amount paid in such cases should be the railway or steamer fare by the lowest class or, in the case of a road journey, subsistence allowance at the rate of 19 pyas per diem, allowing 18 miles as a day's journey. It will not be necessary to pay in addition a subsistence allowance of 25 pyas as is done in the case of destitute prisoners released from jail (paragraph 572, Burma Jail Manual, 1950).

If the steamer journey takes more than one day subsistence allowance at the rate of 19 pyas a day may, however, be given in addition to the steamer fare. All payments made under the authority of these orders will be debited to the budget grant for "Contingencies" of the Court concerned.

Transfer and Withdrawal of Cases.

528 (3). 494. All District Magistrates in Burma have been authorized by the President of the Union * to withdraw from the Magistrates subordinate to them any classes of cases which they think proper.

346-347. Reference to Superior Magistrate and for Higher Punishment.

495. Subordinate Magistrates are strictly forbidden to assume jurisdiction by trying for a minor offence where a major offence has been committed. Use should be made of the powers of reference and committal conferred by sections 346 and 347 (see also paragraphs 496 and 497).

349. 496. It should be noted that a Subordinate Magistrate forwarding an accused to the District Magistrate or Subdivisional Magistrate for punishment is not required to convict but to record the opinion that the accused is guilty. A Magistrate receiving a case under section 349 cannot return it for further enquiry. If a District Magistrate, he can quash the proceedings and withdraw the case for trial before himself or some other qualified Magistrate. In that case the proceedings must be begun afresh from the beginning.

497. If the information required in a judgment in a criminal case is not already given in the reasons recorded for referring a case for higher punishment, then it should appear in the judgment recorded by the Magistrate to whom the case is referred.

* Judicial Department Notification No. 45, dated the 3rd February 1897.

When the necessary information is given in the reasons recorded for referring the case, it need not be repeated at length in the judgment of the Magistrate sentencing the accused, but may be incorporated therein by use of general terms. But in every case the reasons or opinion recorded by the referring Magistrate should be attached to the judgment of the Magistrate to whom the case is referred as part of the decision in the case, and a copy thereof should be given or forwarded whenever a copy of the final judgment is furnished.

Proceedings on Evidence recorded by another Magistrate

350. **498.** Section 350 refers to cases in which one Magistrate succeeds another in the same office, and also to cases transferred from one Court to another. Right to *de novo* trial. The second Magistrate on commencing his proceedings should satisfy himself that the accused is acquainted with the provision allowing him to demand a rehearing of the witnesses if he wishes, and should record the fact on hearing the proceedings.

499. In a *de novo* trial under section 350, the witnesses for the prosecution and the accused must be examined afresh and a fresh charge must be framed.

Contempt of Court.

480, 481. **500.** Attention is drawn to the requirements of section 481 in cases in which a Court proceeds under Section 480.

A Magistrate who does not promptly and duly follow the procedure prescribed by section 480 in the trial of any offence specified therein is barred by section 487 from himself trying the offence.

487. **501.** Except as provided in section 480 and 485, Judge or Bar to Jurisdiction. Magistrate cannot try any person for any offence referred to in section 195, when committed before himself or in contempt of his authority, or when brought under his notice in the course of a judicial proceeding.

Criminal Lunatic and Accused Persons believed to be of Unsound Mind.

502. For the procedure in regard to lunatics generally, including non-criminal lunatics, see under the heading "Lunacy Act," Chapter XXVII, paragraphs 844-859.

503. The President of the Union has directed that the medical officers holding charge of the appointments mentioned in the subjoined schedule may, if so required by a Magistrate, examine persons who are believed to be of unsound mind and give evidence as regards the mental condition of such persons :-

<i>Appointment.</i>	<i>Station.</i>
Superintendent of Jail	Yangon
Superintendent of Jail	Insein.
Superintendent of Jail	Mandalay.
Medical Superintendent, Mental Hospital	Tadagale.*

In any case in which the accused is charged with an offence punishable with death or transportation for life and it is considered desirable that he should be kept under observation under section 464 (1) or 465(1) or for the purpose of coming to a finding under section 470 of the Code of Criminal Procedure, the Court is enjoined to avail itself of the services of the Medical Superintendent, Mental Hospital, Tadagale.

In Yangon when proceedings under section 464(1) of the Code of Criminal Procedure are taken in the case of male lunatics, in cases other than those of the description mentioned above, the accused should not, as a matter of course, be sent to the Mental Hospital, Tadagale, but only where the peculiar circumstances of the case justify such a course, *e.g.*, where the accused is very dangerous to others or noisy.

504. If the crime of which such person is accused be an offence against the person or if there is reason to believe that he has at any time, been aggressive, the Magistrate or Court of Session shall consult the Medical Officer under whose observation the lunatic has been detained, and he shall have before him the information detailed in paragraph 859 *infra* as far as possible, before accepting bail under section 466 of the Code of Criminal Procedure.†

* Judicial Department Notification No. 182, dated the 23rd September 1922 as amended by Notification No. 218 (*Corrigendum*), dated the 9th August 1940.

† Judicial Department Notification No. 65, dated the 5th May 1913.

505. (1) There is no necessity for a Judge or Magistrate when
 Detention of Lunatic. ordering person to be detained in safe custody
 under the provisions of section 466 (2) or
 471(1) of the Code of Criminal Procedure, to refer the case for orders
 to Government. The lunatic should be committed to a jail or to the
 Mental Hospital, Tadagale (as the case may be), under a warrant in
 Form Criminal 133 and the report of the action taken should be sent
 separately to Government.

(2) The report to Government, required by section 466
 (2) or 471(1) in the case of persons of unsound mind, should be made
 by Sessions Judges and Magistrates direct to the Secretary to the
 Government of the Union of Burma, Ministry of Judicial Affairs,
 and not through the High Court or the superior officers of the Magis-
 trate concerned.

506. Whenever a Judge or Magistrate applies for the orders of
 the Government under section 30 (1) of the
 Medical History Sheet. Prisoners' Act, he must forward a Medical
 History Sheet in the Form (Medical) *vide* Chapter XXVII, paragraph
 L.A.3 858.

It is most important that the Medical History Sheet should be
 in the correct form and be countersigned by the Judge or Magistrate
 when forwarded.

507. Whenever under the provisions of section 46, or section
 471, Code of Criminal Procedure, a Court directs that the accused
 person be confined in a lunatic asylum or other suitable place of safe
 custody, the Court shall, on the application of the Superintendent of
 the asylum or jail in which the accused is to be confined, forward the
 proceedings for his perusal, with a request that they may be returned
 within fifteen days.

508. The following statutory rules to regulate the transfer of criminal lunatics to asylums have been made by the President of the Union under the provisions of section 91, sub-section (1), clause (e) of the Lunacy Act * :-

Transfer of Criminal
Lunatic to Asylum.

1. A criminal lunatic who has been ordered by a Court or Magistrate under the provisions of section 466, sub-section (2), or section 471, sub-section (1), of the Code of Criminal Procedure, to be kept in safe custody in any place other than the Mental Hospital, Tadagale, shall be transferred to the Mental Hospital, Tadagale.

2. A criminal lunatic who is sent to a jail for observation under section 464 of the Code of Criminal Procedure, shall not be transferred to a lunatic asylum until the receipt of such orders authorizing his confinement therein: provided that, if any such criminal lunatic has been detained in the jail for more than a month, the Superintendent of the Jail shall make a special report to the Inspector-General of Prisons, who will take such action as may be necessary in the matter.

3. If any prisoner becomes insane after his admission to a jail, report regarding his case shall immediately be submitted by the Superintendent of the Jail to the Inspector-General of Prisons, with a view of obtaining the orders of the President of the Union for his removal to a lunatic asylum. The Superintendent shall forward with his report a nominal roll and medical history sheet of the lunatic. Full details of the lunatic's antecedents and connections, as required by the medical history sheet, shall be obtained from the Magistrate of the district to which the lunatic belongs.

4. On receipt of a warrant or order for the removal of a criminal lunatic to a lunatic asylum, the Superintendent of the Jail shall make arrangements for the removal of the lunatic to the asylum mentioned in the warrant or order. Every precaution shall be taken to secure that the lunatic is properly cared for while in transit to the asylum. The lunatic shall be sent in charge of a police escort, and proper arrangements shall be made regarding his clothing, bedding and food. Two suits of clothing shall be provided. Fetters shall not be used unless absolutely necessary.

* Judicial Department Notification No. 67, dated the 5th May 1913, as amended by Notification No. 41, dated the 11th May 1924.

5. Prisoners who become insane while undergoing imprisonment in jail, may, in urgent cases (*i.e.*, if the lunatic is noisy, filthy or dangerous), be transferred to the asylum by the Superintendent of the Jail in communication with the Superintendent of the Lunatic Asylum in anticipation of Government sanction.

6. Each criminal lunatics received into an asylum shall be accompanied with the following documents :-

(i) In the case of criminal lunatics under section 466 or section 471, Code of Criminal Procedure:-

- (a) Warrant of the Magistrate or Court.
- (b) Medical History Sheet.
- (c) Abstract from Jail Medical case-book.
- (d) Extract from Proceedings of the case.
- (e) Descriptive Roll.
- (f) Certificate of fitness for transfer.

(ii) In the case of criminal lunatics under section 30 (1), Prisoners' Act:-

- (a) Warrant.
- (b) Medical History Sheet.
- (c) Abstract from Jail Medical case-book.
- (d) Extract from Proceedings of the case.
- (e) Descriptive Roll.
- (f) Certificate of fitness for transfer.
- (g) Committal warrants with a note as to the total amount of remission earned while in jail from the original date of confinement to date of transfer to an asylum made on the back of the committal warrant.

7. When a prisoner, who has developed insanity in jail while undergoing a sentence of imprisonment, cannot be transferred, under a Government order, so as to reach a lunatic asylum before his sentence expires, he shall be detained until the expiration of his sentence, and then be handed over to the police along with the certificate of the medical officer and the medical history sheet.

509. In amplification of these rules, the following instructions have been issued by the President of the Union for the guidance of Judges and Magistrates and officers concerned* :-

1. The Magistrate or Court of Sessions making a detention order under section 466 (2), or section 471(1) of the Code of Criminal Procedure, shall invariably submit the proceedings and connected papers to Government who may in their executive capacity vary the order as circumstances may require. When lunatic prisoner is reported to be capable of making his defence and is sent up for trial under section 473 of the Code of Criminal Procedure, the Medical Superintendent of the mental hospital will forward his medical history sheet carefully filled in, together with an abstract from the case-book, detailing the chief events of his history, with a recorded opinion of his case.

2. The following are the principles on which Government will act in disposing of the cases of criminal lunatics sent up for orders under sections 474 and 475 of the Code of Criminal Procedure :-

(1) Final orders will not be issued unless the luna-

(1) Medical History tics' papers are accompanied by a medical history sheet to accompany every case.

A.- Recovered Criminal Lunatics.

(2) If the crime be against the person, the cause

(ii) Crime : Offence *ganja* or other intoxicant, and the type of insanity acute or chronic mania, a period of three years should be spent in a mental hospital free from all signs of insanity before any action is taken.

against person.

Cause : *Ganja*, etc.,

Type: Acute or chronic mania.

(a) At the end of that time, if under forty years of age and in good physical health, he may undergo a period of probation of six years in the mental hospital.

(a) Age under 40 years.

* Department of Health and Public Works (Medical Branch), "G" Circular No. 7 of 1940, dated the 11th March 1940.

- (b) If over forty years of age, or in poor physical health, the period of probation in the mental hospital may be shortened according to circumstances of crime and nature of security offered.
- (b) Age over 40 years.

In any case security should, if possible, be taken on the expiry of his period of probation in the mental hospital.

- (3) If the crime be an offence against the person,
- (iii) Crime : Offence against person. Cause : Not *ganja*, etc. Type : Acute or chronic mania. the type of insanity acute or chronic mania, and the alleged cause not *ganja* or other intoxicant, a period of at least four years, complete freedom from insanity should be spent in a mental hospital before action is taken.
- (a) At the end of that time, if under forty years of age and in good physical health, he should undergo a probation of four years in the mental hospital.
- (a) Age under 40 years.
- (b) If over forty years of age, the period of probation in the mental hospital might be shortened, according to circumstances of health and surety. Security should, if possible, be taken before his final release from mental hospital supervision.
- (b) Age over 40 years.

- (4) If the crime be not an offence against the person, but the lunatic has at any time exhibited dangerous or violent tendencies and the type of insanity is acute or chronic mania, he should be treated exactly as above, except that the period of probation in the mental hospital may be shortened in accordance with the kind and degree of violence exhibited. Security should, if possible, be taken before his final release.
- (iv) Crime : Not offence against person but mental attitude aggressive. Type, Acute or chronic mania.

(5) **If the crime be not an offence against the person and there be no history that the lunatic was at any time aggressive, he may generally be treated much as if he were a non-criminal lunatic.** Government will generally be guided in such cases by the recommendations of the Visitors and of the Medical Superintendent of the mental hospital in which the lunatic has been confined.

(6) **If the crime be murder, the type of insanity melancholia, a period of at least six years' complete freedom from insanity should be passed in a mental hospital, before action is taken. During the last year of this period the recovered criminal may be allowed access to the bazaar under certain regulations.**

(a) **If at the end of that period he is still under forty years of age, he should not be released except on excellent security.**

(b) **If over forty years of age, security should, if possible be obtained.**

(7) **If the crime be attempt to commit suicide, and not murder, the type melancholia, and if he has not exhibited any violent tendencies while under observation, some relaxations of the rules may be permitted according to circumstances of age, period of detention, etc.**

B.- Unrecovered Criminal Lunatics.

(8) (a) **If the crime be an offence against the person, the type chronic mania of the irritable aggressive kind, it will seldom be possible to release the lunatic during the continuance of insanity except in advanced age and on exceptional security.**

(viii) Crime : Offence against person.

(a) Type : Irritable chronic mania.

- (b) Type : Hypomania. (b) If the crime be an offence against the person, the type of insanity hypomania of the amiable kind, a lunatic may be released after passing six to ten years in that condition, but only on security.

If below forty years of age, detention should generally be ten years; if over forty years of age, six years may suffice.

- (9) If the crime be not an offence against the person, or if an offence against the person of a trivial nature and the lunatic has never exhibited aggressive symptoms, he may generally be treated much as if he were a non-criminal lunatic, and Government, when dealing with his case under section 474, will be guided chiefly by the recorded opinion of the Medical Superintendent of the mental hospital as to the propriety of releasing him and by the recommendations of the Visitors.

- (a) Type : Hypomania. (a) If his mental attitude be hypo-mania, characterised by good humour, cheerfulness and amiability, and he is able to earn a livelihood, he may generally be released with or without security.

- (b) Type : Slight chronic dementia. (b) If it be chronic dementia or imbecility of slight degree, he may be released on similar conditions.

- (c) Type : Irritable chronic mania or pronounced demantia. (c) If he be suffering from chronic mania of the irritable mischievous type or chronic dementia of a more pronounced character, he may still be released, but only on satisfactory security that he will be properly cared for and prevented from doing injury to himself or others.

- (d) If the chronic mania be of ~~inveterate~~ type or the dementia or imbecility of the last degree, the lunatic can only be safely and humanely treated in a mental hospital.
- (d) Type : Worst degrees of chronic mania, dementia or imbecility.

Offences triable under Military, Naval or Air Force Law.

549. **510.** In exercise of the powers conferred by sub-section (1) of section 549 of the Code of Criminal Procedure, and in supersession of the rules published in Judicial Department (Judicial I Branch) Notification No 365, dated the 23rd July 1946, the President of the Union makes the following rules* applicable to cases in which persons subject to military, naval or air force law shall be tried by a Court to which the said Code applies or by a court-martial:-

(1) These Rules may be called the Criminal Procedure (Military Offenders) Rules, 1950.

(2) Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable under the Burma Army Act,[†] the Burma Naval Volunteer Reserve (Discipline) Act, 1940 (Act No. XV of 1940), the Burma Naval Discipline Act, 1947, (Burma Act No. LXXXI of 1947), the Burma Volunteer Air Force (Discipline) Act, 1941 (Burma Act III of 1941), the Burma Air Force (Discipline) Act, 1947 (Burma Act XLV of 1947), to be tried by a court-martial, such Magistrate unless he is moved by the competent military, naval or air force authority to proceed against the accused under the Code of Criminal Procedure shall, before so proceeding give notice to the Commanding Officer of the accused, and until the expiry of a period of twenty-one days from the date of service of such notice, shall not-

* Judicial Branch Notification No. 102, dated the 24th May 1950, published at page 368 of *Burma Gazette*, Part I, of 3rd June 1950.

† Myanmar Army Act 1959.

- (d) If the chronic mania be of ~~inveterate~~ type or the dementia or imbecility of the last degree, the lunatic can only be safely and humanely treated in a mental hospital.
- (d) Type : Worst degrees of chronic mania, dementia or imbecility.

Offences triable under Military, Naval or Air Force Law.

549. **510.** In exercise of the powers conferred by sub-section (1) of section 549 of the Code of Criminal Procedure, and in supersession of the rules published in Judicial Department (Judicial I Branch) Notification No 365, dated the 23rd July 1946, the President of the Union makes the following rules* applicable to cases in which persons subject to military, naval or air force law shall be tried by a Court to which the said Code applies or by a court-martial:-

(1) These Rules may be called the Criminal Procedure (Military Offenders) Rules, 1950.

(2) Where a person subject to military, naval or air force law is brought before a Magistrate and charged with an offence for which he is liable under the Burma Army Act,[†] the Burma Naval Volunteer Reserve (Discipline) Act, 1940 (Act No. XV of 1940), the Burma Naval Discipline Act, 1947, (Burma Act No. LXXXI of 1947), the Burma Volunteer Air Force (Discipline) Act, 1941 (Burma Act III of 1941), the Burma Air Force (Discipline) Act, 1947 (Burma Act XLV of 1947), to be tried by a court-martial, such Magistrate unless he is moved by the competent military, naval or air force authority to proceed against the accused under the Code of Criminal Procedure shall, before so proceeding give notice to the Commanding Officer of the accused, and until the expiry of a period of twenty-one days from the date of service of such notice, shall not-

* Judicial Branch Notification No. 102, dated the 24th May 1950, published at page 368 of *Burma Gazette*, Part I, of 3rd June 1950.

† Myanmar Army Act 1959.

(a) convict the accused under section 243, acquit him under section 247 or section 248, or hear him in his defence under section 244 of the said Code, or

(b) frame a charge against the accused under section 254 of the said Code, or

(c) make an order committing the accused for trial by the High Court or the Court of Session under section 213 of the said Code, or

(d) transfer the case for inquiry or trial under section 192 of the said Code.

(3) Where, within the period of twenty-one days mentioned in Rule 2, or at any time thereafter before the Magistrate has done any act or issued any order referred to in that rule, the Commanding Officer of the accused gives notice to the Magistrate that, in the opinion of competent military, naval or air force authority, as the case may be, the accused should be tried by a court-martial, the Magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the statement prescribed by section 549 of the said Code to the authority specified in the said section.

(4) Where a Magistrate has been moved by competent military, naval or air force authority, as the case may be, under Rule 2, and the Commanding Officer of the accused subsequently gives notice to such Magistrate that, in the opinion of such authority the accused be tried by a court-martial, such Magistrate, if he has not before receiving such notice done any act or issued any order referred to in Rule 2, shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in section 549 of the said Code, to the authority specified in the said section.

(5) Where an accused person, having been delivered by the Magistrate under Rule 3 or 4, is not tried by a court-martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken, against him, the authority concerned shall inform the Magistrate, with a brief statement showing why no proceeding had been taken against the accused person, and the Magistrate shall report the circumstances, with his comment thereon, if any, to the President.

(6) Where a Magistrate having jurisdiction is of opinion that proceedings ought to be instituted before him in respect of any alleged offence, he may, by written notice, require the military, naval or air force authority concerned at its option either to deliver the offender to him to be proceeded against according to law or to postpone the proceedings pending a reference to the President, and in every such case the said authority shall either deliver the offender in compliance with a requisition or shall forthwith refer the question as to the Court before which proceedings are to be instituted for the determination of the President, whose order thereon shall be final.

(7) In these rules "competent military authority" means the General Officer Commanding, Burma Army and all Commanders of North and South Burma Sub-Districts, Northern and Southern Commands or, Divisions or, Brigades or, Areas; "competent naval authority" means the Officer, not below the rank of Commander, Commanding Burma Navy; "competent air force authority" means the Officer, not below the rank of Wing Commander, Commanding Burma Air Force and the words "the Magistrate" include a Judge having jurisdiction to try the accused persons.

511. Under section 41[†] of the Burma Army Act, every person subject to the Act who commits any civil offence shall be deemed guilty of an offence under military law and be triable by Court-martial, except where the offence is murder or culpable homicide, in relation to a person not subject to military law, or rape, and is committed by a person not on active service. The result of these provisions of law is that the procedure prescribed in paragraph 526 must be followed in all cases in which a person subject to military law is brought before a Magistrate and charged with any offence, unless that offence is murder or culpable homicide, in relation to a person not subject to military law, or rape, and was committed by a person not on active service.

[†] Section 71. 72 Myanmar Army Act 1959.

Cognizable Offences under Special and Local Acts.

512. The following is a list of offences under Special and Local Acts, which are cognizable with the meaning of section 4 (f) Code of Criminal Procedure, and should be classified as such:-

Acts.	Sections.
The Arms Act	19, 19A and 20.
The Union Military Police Act	25 – 38.
The Burma Excise Act	30 – 34 inclusive, 37 and 38, [if accused found committing the offence – see section 54 (a)].
The Ferries Act	26.
The Burma Post Office Act	52 (including abetments and attempts).
The Railways Act	100, 101, 119 – 121 inclusive, 126 – 129 inclusive, and 130 (1).
The Rangoon Police Act	30 and 31 read with section 54, Code of Criminal Procedure.
The Registration Act	81 and 82.
The Burma Salt Act	9, 10 and 13, read with section 9.
The Burma Telegraph Act	25, 26, 27 and 29 (including attempts).
The Metal Tokens Act	4.
The Burma Official Secrets Act	3 and 4.
The Births, Deaths and Marriages Registration Act.	27
The Burma Aircraft Act	8 (including abetments and attempts).
The Public Property Protection Act. 1947.	6 (1).
The Restriction of Bribery and Corruption Act, 1948.	4 (2).

CHAPTER XVIII.

ABSCONDING ACCUSED.

513. (1) When an accused person absconds or cannot be found and the Magistrate is satisfied that it will be useless to issue further process he should take steps under section 512 (*see* paragraph 1164). But when evidence is recorded under section 512, it is desirable that it should be recorded as soon as possible after the fact of the absconding of the accused has been ascertained. In proceedings of this kind the following instructions should be observed :-

(1) When a Magistrate proposes to proceed under section 512 of the Code of Criminal Procedure, he should first of all record evidence that the accused person has absconded and that there is no immediate prospect of arresting him. Evidence on these points should be recorded before any evidence relating to the alleged offence is taken.

(2) If the Magistrate considers that the evidence so recorded proves that the accused has absconded and that there is no immediate prospect of arresting him, he should record a finding to that effect. This finding may be recorded on the diary. It is important and should on no account be omitted.

(3) After recording the finding above-mentioned, the Magistrate should proceed to record the evidence against the accused. In so doing, he should make the record as full and detailed as possible. The Honourable Judges have observed that evidence recorded under section 512 of the Code of Criminal Procedure is often recorded in a very brief and perfunctory manner, and is seldom of much value. The Magistrate should try to ascertain all that the witnesses know about the case and should question them carefully for this purpose.

(4) In hurt cases and cases of a similar nature Magistrates must be particularly careful to record the medical evidence, and in cases in which death has been caused they must see that there is adequate evidence on the record to establish the identity of the body. As owing to the absence of the accused the provisions of section 509, Code of Criminal Procedure, are not applicable to such

cases, District Magistrates should as far as possible arrange for their disposal at the station where the medical officer, whose evidence is required, resides.

(5) When the evidence has been recorded the Magistrate should consider whether there is sufficient *prima facie* proof of the offence. If there is, he can proceed under sections 87 and 88. If there is not sufficient *Prima facie* proof of the offence, he should refuse to issue either proclamation or attachment. In petty cases it is not necessary to take any step under sections 87 and 88, even if there is sufficient *prima facie* proof of the offence. Proclaiming a man for a petty offence makes him a fugitive from justice and is likely to drive him to more serious crime. In case of doubt, a reference should be made to the Sub-divisional or District Magistrate.

(6) **In a case in which there are more than one accused**, where any of the accused abscond before, or in the course of, the trial if evidence is recorded to prove that such accused have absconded and that there is no immediate prospect of arresting them, and if the Magistrate records a finding that this has been proved, the evidence subsequently taken in the case can be used in accordance with the provisions of section 512 of the Code of Criminal Procedure. A separate miscellaneous proceeding should be drawn up, on which should be noted the number and description of the regular trial in which the evidence is recorded. This miscellaneous proceeding should be registered in Criminal Register No. II; and its number should be noted in the diary of the regular trial. A note should also be made on the cover of the regular trial record, so that when the ordinary time for its destruction arrives, it may not be destroyed but **may be transferred to the separate miscellaneous proceeding mentioned above**. Where evidence that some of the accused have absconded and that there is no immediate prospect of arresting them cannot be recorded at once, the trial of the remaining accused should proceed and separate proceedings under section 512 of the Code of Criminal Procedure should be held in respect of the absconding accused.

(2) Magistrates should note that it is only the Court which is competent to try or commit for trial for the offence complained of an accused person who has absconded and of whose arrest there is no immediate prospect which may take action under section 512 of the Code of Criminal Procedure. Thus a third class Magistrate

not empowered to commit for trial under section 206, Code of Criminal Procedure, could not record evidence under this section against an absconder accused of dacoity.

(3) The attention of Magistrates is called to the second sentence of section 512 (1) of the Code of Criminal Procedure. When evidence has been recorded under this section, and the offender is subsequently arrested and sent up for trial, no statement previously recorded under section 512 of the Code of Criminal Procedure can be admitted in evidence against him unless and until it is proved that the witness who made it is dead or incapable of giving evidence, or that his attendance cannot be procured without an amount of delay, expense, or inconvenience which, in the circumstances of the case, would be unreasonable.

CHAPTER XIX.

MISCELLANEOUS CASES (MAINTENANCE AND BONDS).

Maintenance

488 (8). **514.** When a person ordered, under section 488 of the Code of Criminal Procedure, to pay maintenance has ceased to reside in the jurisdiction of the Magistrate who passed the order, an order for the recovery of arrears may be made either by the Magistrate who passed the order for payment of maintenance or by a Magistrate having jurisdiction in the place where such person resides.

489. **515. (1)** The fact that a child for whose maintenance an order has been passed has grown older constitutes a change in the circumstances of the person receiving maintenance.

(2) Although divorce is not "a change in circumstances" such as is referred to in section 489, it is ground for enquiry under section 488 (5) whether the parties are living separately by mutual consent, and also cause for refusing to enforce an order of maintenance under section 490, Code of Criminal Procedure.

488 (6).

516. Evidence of neglect or refusal to maintain must be taken in the presence of the husband or father, as the case may be, and an order to pay maintenance cannot be passed in the absence of the husband or father; provided that if the Magistrate is satisfied that he is wilfully avoiding service or wilfully neglects to attend Court, the case may be heard and determined *ex-parte*.

Record of Evidence.

517. (1) It is only when there is wilful neglect to comply with an order directing payment of maintenance that a Magistrate can issue a warrant to levy the amount due.

Enforcement of order.

(2) An order for the payment of arrears of maintenance due under a private agreement between husband and wife is not authorised under section 488, only an order for a future allowance can be passed.

(3) An order of imprisonment in anticipation of a default of payment of the maintenance ordered under section 488 is illegal.

488 (3).

(4) The maximum sentence which may be imposed on any one occasion under section 488 (3) is one month.

(5) Arrears of maintenance can be recovered for one year only.

Recovery of Arrears.

406 A.

518. Under section 406, an appeal lies to the Court of Session against any order of a Magistrate passed under section 488 or section 489.

Appeals.

Bonds.

518.

519. In lieu of executing bond, the Court may in any case permit the deposit, to such amount as it may fix, a sum of money or Government securities. When security is ordered under Chapter VIII, the Court may require the deposit of a sum of money or Government securities, not exceeding K 100 in value, in lieu of executing a bond.

Deposit of Money in lieu of Bond.

514 B.

520. In all cases when a minor is required to execute a bond, a bond executed by a surety or sureties only may be accepted instead.

Bond of Minor.

521. (1) When the bond is for the appearance of a person before a Court, that Court only may declare that the bond has been forfeited.

Forfeiture of Bond.

(2) A bond must be construed strictly, and the amount of the bond cannot be forfeited in case of failure to appear in a Court to which the case been transferred, if the obligation to appear in that Court has not been specified in that bond. Hence, ordinarily when a case is transferred, if the accused is on bail, a fresh bond to appear before the Court to which the case is transferred should be taken from him. * But see section 170 (3), Code of Criminal Procedure.

514.

522. When the penalty of a bond has been paid the bond is discharged and neither principal nor sureties are subject further liability, whether part of the penalty has been remitted under section 514, sub-section (5), or not.

Discharge of Bond.

523. The whole or any part of the penalty of a bond may be recovered from the principal or any of the sureties. But not more than the sum named can be recovered in the whole.

Recovery of Penalty.

CHAPTER XX.

COMMITTAL INQUIRIES AND SESSIONS TRIALS.

Inquiry into Cases triable by Courts of Session.

18.
206-220

524. The following explanatory summary of the provisions of Chapter XVIII is given for the guidance of all Magistrates empowered to commit for trial : -

Procedure in Committal Inquiry.

208.

(1) The Magistrate must examine all witnesses for the prosecution, and should also summon and examine any witnesses whom the accused desires to call prior to the consideration of question of charge.

209 (2) If the Magistrate, after recording all the evidence for the prosecution and the evidence of any witnesses called by the accused at this stage, and (if he considers it necessary) examining the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him finds that no case has been made out against the accused, it is his duty to discharge the accused. The accused may be discharged at any earlier stage of the inquiry if the Magistrate considers the charge to be groundless.

210 If the Magistrate finds that there is sufficient evidence to establish a *prima facie* case that accused has committed an offence triable by the Court of Session he must frame a charge and read and explain it to the accused. The accused must not be asked to plead to the charge.

211 (3) When the charge has been read and explained to the accused he should be required to state forthwith whether he desires to give evidence on his own behalf and whether he desires to call witnesses on his trial, and the Magistrate must warn the accused in the manner required by proviso (b) to section 342 (1). The accused shall then be required to give in at once a list of the witnesses whom he wishes to be summoned for the defence on his trial.

212 (4) If the accused states that he does not desire to give evidence on his own behalf the Magistrate shall examine the accused generally on the whole case, as required by section 342 (2), for the purpose of enabling him to explain any circumstances appearing in evidence against him. If the accused states that he does desire to give evidence on his own behalf, the Magistrate may take the evidence of the accused, but is not bound to do so.

212 (5) The Magistrate may also summon and examine any of the witnesses named in the list given in by the accused, but is not bound to do so.

213 (6) If, after examining the accused or hearing the evidence of the accused and hearing the evidence of witnesses for the defence under sub-paragraph (5), the Magistrate considers that there are no longer grounds for putting the accused on his trial he may cancel the charge and discharge the accused. Otherwise, the Magistrate should make an order committing the accused for trial.

(7) The Magistrate must always record his reasons for discharging the accused, but reasons for committing the accused for trial need not be recorded.

(8) After committal, the Magistrate should examine the evidence, and make a list of witnesses for the Court of Session, placing them as far as possible in chronological order of the events to which they testify. If any witness for the prosecution can give no relevant evidence, or is wholly superfluous, the Public Prosecutor should be asked whether he wants the witness and unless he gives a good reason, the witness should be excluded from the list. If any witness for the defence has no relevant evidence to give, the accused should be asked whether he wants him; if the accused does not want him, or if the witness seems to be named for the purpose of vexation or delay, or of defeating the ends of justice, he should be excluded from the list *unless the accused deposits his expenses.* (See also para 577.)

(9) All witnesses whether for the prosecution or for the defence who have appeared before the Magistrate and are in the Court of Session list should be caused to execute bonds to attend at the Court of Session when called on. These bonds are of great importance and it is the duty of Committing Magistrates and Public Prosecutors to see that they are properly drawn up and duly executed.

The bond should be in Criminal Form 137 and the date to be entered upon it is the date fixed for the opening of the next sessions or the date which the District Magistrate may have intimated under paragraph 567 as being the first date on which the Sessions Court is likely to be able to take up a new case.

(10) When notice of the date finally fixed for trial is received from the District Magistrate, the Committing Magistrate shall at once issue summonses to the witnesses and fix a date for the return of the summonses. On that date, his clerk shall report whether all the witnesses have been duly served, and if they have not, further steps shall be taken to procure their attendance.

(11) If, after the witnesses have executed bonds, it should appear for any reason that their attendance at the Court of Sessions is not required, the Committing Magistrate must at once give them notice to this effect. If after summonses have issued to witnesses the date of the trial is changed, he must issue fresh summonses with a note to the effect that the earlier summonses have been cancelled.

211, 291.

525.

List if Defence
witnesses; Obligation
of Accused.

(1) As inconvenience is liable to arise at Sessions trial from accused persons wishing to call witnesses of whom no list has been given to the Magistrate and who are not in attendance, owing to doubts whether the accused have fully understood their obligation to give in a list of all the witnesses required for the defence in sufficient time before the trial, Committing Magistrates shall carefully explain to accused persons the provisions of sections 211 and 291.

(2) Magistrates shall, in all cases which they are about to commit for trial, record in their own handwriting that, after reading and explaining the charge or charges to the accused, they have required him to give in at once orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial. Magistrates shall also warn accused and advocates or pleaders appearing for them that if such a list is not given in at once, a list will not necessarily or as a matter of course be accepted at a later stage either in the Committing Court or in the Court to which the accused is committed for trial; and also that if the list given in at once is not complete a further list will not necessarily or as a matter of course may be accepted. The acceptance of a further list under sub-section (3) of section 211 is a matter of discretion which must be exercised with reference to the circumstances of each case. The provisions of the latter part of section 216 should be considered in all cases.

(3) Magistrates shall warn the accused and advocates or pleaders appearing for them that if a list of witnesses is not given in at once, the High Court or Court of Session will not summon witnesses named in a list given in to it as matter of course, and that the Judge dealing with the case may and probably will require to be satisfied that the persons named as witnesses can give material and relevant evidence in the case and that their attendance is necessary for the ends of justice.

216

(4) The power of refusal to summon witnesses before the Court of Session, which the Magistrate possesses in certain circumstances, should be very cautiously exercised, and reasons should be fully recorded in each instance.

- 208(1). 526. (1) The accused is not bound to produce any witnesses before a charge is framed, but
 211(2). Magistrate's inquiry to be thorough and
 212(2). any witnesses so produced must, under
 213(2). section 208 (1), be examined by the Magistrate. With regard to witnesses

cited under section 211 (2) after the charge has been framed, under section 212 it is within the discretion of the Magistrate to examine them or not, as he thinks fit. Ordinarily, they need not be examined, but there may be circumstances under which it is desirable that the Committing Magistrate should examine them; for instance, if the Magistrate is of opinion that their evidence might be of such weight as to justify him in cancelling the charge and refusing to commit, under section 213 (2).

- 208(2). (2) The accused has, under section 208 (2), the right to cross-examine the prosecution witnesses. The cross-examination of each witness should however always, follow immediately after his examination-in-chief and should be curtailed as much as possible. The provisions of section 256 (1), Code of
 256(1). Criminal Procedure, operate only in the trial of warrant cases and not in committal enquiries, and the accused must not be allowed to reserve his cross-examination till the examination-in-chief of all the prosecution witnesses is over.

(3) A Committing Magistrate should not confine himself to examining only the witnesses produced for the prosecution or defence. He should remember that he is holding an *inquiry* and that his business is to elicit the truth and to see that the case as presented to the Court of Sessions is complete. It is his duty to call, of his own motion, and examine all such additional witnesses for the prosecution (who are not cited in the charge sheet) as appear from his inquiry to be able to give relevant evidence concerning the facts of the case.

- 208, 212. (4) Sections 208 and 212 give a committing Magistrate full power to call and examine any witnesses for the prosecution or defence who have not been produced before him. So also a Committing Magistrate fails in his duty if he simply records the depositions of witnesses as given in answer to questions put by the Public Prosecutor or by the accused. He should himself examine the witnesses in the interests both of the prosecution and the defence; and more especially should he do this when the accused is undefended and unable, through ignorance, to cross-examine the witnesses for the prosecution properly.

(5) Committal inquiries must be completed with the utmost expedition, otherwise they fail in one of their main objects, which is to obtain a record of each witness's evidence at the earliest possible moment. Committal inquiries should be conducted only by whole-time Magistrates as the statements of the prosecution witnesses should be recorded without any delay.

527. In all important criminal cases, and especially in Investigating Officer cases of murder, dacoity, and robbery, it is to be a witness. desirable that the police officer by whom the investigation was conducted should be in readiness to be examined, if necessary, as a witness in regard to the circumstances of the investigation. The police officer should bring with him his diary of the case.

528. Dying depositions made to a Magistrate authorized to take them, though not made in the presence of the accused, need not be proved by that officer. They may be tendered in evidence under section 80 of the Evidence Act. It is necessary, however, to prove the identity of the deponent and this can best be done not by summoning the Magistrate, who will rarely be in a position to prove it, by summoning someone else who was present at the time the deposition was taken.

Where the dying deposition has been recorded by a Magistrate not authorized to record it, the deposition has to be proved by the recording Magistrate. Even in such cases it is not necessary for the Magistrate to repeat the record *verbatim* in his evidence; it is sufficient for him merely to refer to the record and satisfy to its correctness, and that it was made by the person and under the circumstances in question. (See *Sulaiman v. The King* 1941, Rangoon, 528.)

529. Committing Magistrates should invariably record the evidence of the proper Medical Officer before committing to Court of Session any case regarding an offence affecting the human body :

Provided that where there is already prima facie evidence to warrant a commitment to the Sessions Court, and the evidence of the Medical Officer is likely to be of a purely formal character, and great inconvenience would result from his being summoned to a Magistrate's Court, the examination need not be taken by the Committing Magistrate, but his attendance before the Sessions Court if required by the Sessions Judge, should be ensured.

530. In cases committed to the Sessions regarding offences affecting the human body the medical witnesses should, among other things, be specially questioned on the following points: -

(1) The nature of the wound or wounds, if any, inflicted, and in the case of incised wounds, their length, breadth and depth.

(2) The precise locality of the wound.

(3) In cases where death has been caused - although by resorting to proper remedies and skilful treatment the death might have been prevented - whether -

(a) the person whose death has been caused was labouring under any disease or bodily infirmity, and if so, whether the injury inflicted was likely to cause his death;

(b) the injury inflicted was sufficient in the ordinary course of nature to cause death;

(c) the injury inflicted was merely likely to cause death.

(4) In cases where death has been caused, the age of the deceased and whether the post-mortem examination showed that the deceased was a person of sound constitution.

(5) The exact day and hour of arrival at the hospital of the person injured by the accused, and the date and hour of his death or departure from hospital.

(6) Whether death was accelerated by any causes beyond the control of the accused, e.g., by the delay which occurred in taking the deceased to hospital, by the mode in which he was conveyed, or by the treatment he received there, or by any illness or disease he contracted in or before admission to hospital unconnected with the injuries he received from the accused.

(7) The direction from which the blow was probably delivered.

(8) Whether the wound probably or would certainly cause death.

See also paragraphs 625 to 627 with regard to the method to be adopted in examining Medical Officers.

531. Committing Magistrates are reminded that a Medical Officer's report of a *post-mortem* examination is not evidence and therefore cannot be substituted for the Medical Officer's deposition. The Medical Officer may, if he desires to do so, refresh his memory by referring to any report he may have submitted, and he may be cross-examined upon that report, but the report itself is not evidence. But when such a report is relevant under section 32, Evidence Act, it can be proved by the Assistant who was present at the *post-mortem* or by some one familiar with the medical officer's hand-writing. Another doctor can then in the witness box give expert opinion based on the report.

532. A medical witness should invariably be required to state in evidence what rank he holds in the medical profession, or under Government, and what experience he has had in medical work generally, or in treating cases similar to that with respect to which he has been called upon to give evidence.

509

533. (1) The deposition of medical witness, in order to be admissible in evidence under section 509, must either show on its face that it was taken and attested by a Magistrate in the presence of the accused, or must be proved to have been so taken and attested.

(2) To avoid the necessity of examining a witness in order to prove that the requirements of section 509 have been fulfilled, it is ordered that a Magistrate who has taken the evidence of a medical witness in the presence of the accused shall subscribe the deposition thus : -

" *The foregoing deposition was taken in the presence of the accused * , who had an opportunity of cross-examining the witness. The deposition was explained to the accused, and was attested by me in*

*his (or her)
their* presence.

Magistrate."

* The names of the accused persons should be inserted.

534. When a confession of the accused to a Magistrate is tendered in evidence it should be ascertained whether provisions of the law have been strictly complied with. If those provisions have not been complied with, the Court of Session cannot admit the confession without special proof, and for this purpose the Committing Magistrate should take the necessary evidence and include the names of the witnesses, such as the Magistrate who recorded the confession, in the list of witnesses for the prosecution in the Court of Session. He should also see that the circumstances under which the confession came to be made are duly brought out in evidence. Attention is invited to paragraphs 600 to 607.

535. If an accused person who is to be committed to the Court of Session is charged with previous convictions he must not be asked to plead to them. The Committing Magistrate should use his discretion as to summoning witnesses to prove the identity of the accused with the previously convicted person before the Court of Session.

536. When an offence charged is triable by Magistrate as well as by a Court of Session, the Magistrate must exercise his own discretion in deciding whether the case should be committed or whether the justice of the case will be fully satisfied by a sentence which he himself is authorised to pass. Cases which present no legal difficulty, and in which the accused can be adequately punished by a Magistrate under his ordinary or special powers, should not be committed to Sessions.

537. In every case in which the accused is charged with committing an offence as a result of which death has ensued and there is any doubt whether the intention or knowledge of the accused was such that the offence amounts to culpable homicide, the Magistrate inquiring into the case ought to commit the accused to Sessions. In such cases when the Magistrate is clearly of opinion that the accused has not committed an offence amounting to culpable homicide he must exercise his discretion in determining whether the accused should be committed to Sessions or whether the case can adequately be disposed of by a Magistrate.

538. A Committing Magistrate, when enquiring into a case with a view to commitment, should
 Discharge of Accused. commit to Sessions where a *prima facie* case is made out for the prosecution, or where the guilt or innocence of the accused depends on the proper determination of a difficult question of law. If he considers the evidence for the prosecution to be false, however numerous the witness may be, he ought to discharge the accused. If the Magistrate is in doubt as to their credibility but the evidence if believed would be sufficient for a conviction, or if the evidence is conflicting and there is doubt as to the true facts, he should not take on himself the functions of a superior Court, but should commit the case. It is however a waste of time and unfair to the accused to commit him to Sessions where there can be no reasonable expectation of a conviction.

539. If two or more persons are accused in any case arising out of the same act
 More than one accused. or transaction, and the Magistrate has not the necessary powers to enable him to try any one of them, or to punish him adequately, the Magistrate should hold a preliminary inquiry, and, if a *prima facie* case is made out against that accused, he should commit all the accused, against whom a *prima facie* case is made out, to the Court of Session.

540. The Committing Magistrate should send a letter
 Report of Commitment. reporting commitment in Form Criminal 85 through the District Magistrate to the Sessions Judge and should send with the letter-

- (1) The record of the inquiry ;
- (2) a duplicate of the charge, signed by himself;
- (3) a list of witnesses for the prosecution and defence;
- (4) a list of exhibits other than documents.

541. An intimation of the committal in Form Criminal 86 must be sent direct to the Sessions Judge, immediately the commitment has been made.

542. (1) The list of witnesses should contain the
 List of Witnesses. following information : -

Name of witness ;
 class, under the rules for payment of expenses ;
 residence ;

and in respect of the journey to the Court of Session --

- (a) railway fare according to class ;
- (b) steamer fare according to class ;
- (c) distance which must be travelled by boat ;
- (d) distance which must be travelled by road ;

(2) A list of witnesses for the prosecution and defence attached to the letter reporting commitment under paragraph 540 should always be filed in the Sessions record immediately after the commitment order. When the record is sewn up and paged at the conclusion of the trial, the page on which the evidence of each witness commences should be entered on the list so that it may serve as an index.

543. (1) The list of exhibits other than documents
 List of Exhibits. should give the number assigned to and
 a full description of, each article.

(2) The exhibits themselves should be securely packed, and sent with papers to the District Magistrate if the Committing Court is not at the headquarters of the district. It is the duty of the District Magistrate's Bailiff to produce the exhibits before the Court of Session at the trial, unless the Sessions Judge directs that the exhibits be taken charge of by an officer of the Sessions Court. If he does so direct, the Court of Session shall keep a Bailiff's Register III, and the exhibits should be forwarded by the District Magistrate to the Court of Session.

544. (1) When the papers are received in the District
 Duty of District Magistrate. Magistrate's office, the Head Judicial
 Clerk should at once examine them, and submit them to the District Magistrate with a report in Form Criminal 89. The District Magistrate should then give such orders and take such steps as may be necessary to remedy any defects disclosed in the report.

(2) The District Magistrate should himself examine the record to ascertain whether the inquiry has been as complete as possible, and should take steps to remedy any defects that he discovers.

545. The record and other papers should be forwarded with as little delay as possible to the Court of Session, a copy of the charge and of the list of witnesses being retained in the District Magistrate's office.

546. The duty of fixing the date of the commencement of each Sessions trial, and of producing the accused before the Sessions Court on the date so fixed or any date to which the case may be postponed, shall rest with the District Magistrate. The date should be fixed in consultation with the Sessions Judge, who should, immediately on receipt of the intimation of committal in Form Criminal 86, communicate to the District Magistrate the date on which the trial will be taken up.

The date so fixed and any change in it must be communicated at once to the Committing Magistrate.

The date for the trial of cases committed to the Sessions should be so arranged that the prosecutors and witness may not be brought from their homes to the place where Sessions is held before they are actually required.

547. The District Magistrate will from time to time intimate to all Committing Magistrates what days are still free for new trials at the next Sessions, and when all the days allowed for one Sessions are full, will at once direct them to fix any new cases for a subsequent Sessions.

548. (1) The District Magistrate must see that prosecutors and witnesses receive timely written notice of the date on which their attendance before the Sessions Court is required. Such notice may be served upon them either direct, or through the Committing Magistrate, as the District Magistrate in each case may determine.

(2) If the prosecutor and witnesses are not in attendance on the date fixed for trial, the District Magistrate should see that the Public Prosecutor is properly instructed as to the grounds, if any, upon which he is to apply to the Sessions Court for a postponement of the case.

549. (1) The District Magistrate should give timely Notice to, and Duty of notice of commitments to the Public Prosecutor. The Public Prosecutor is required to make themselves fully acquainted with the facts of the cases in which he is engaged, and for this purpose he should be permitted to examine the police diaries and the commitment records.

(2) Sessions Judges should exact a proper degree of attention on the part of Public Prosecutors to the duty which rests upon the latter to communicate with the Committing Magistrate under the orders, if necessary, of the Sessions Court or High Court, and to see that any additional evidence available and required is in readiness when the trial takes place, or, if necessary, apply for a postponement or adjournment in order that such evidence may be adduced.

(3) Sessions Judges will bring to the notice of the District Magistrate every instance in which the Public Prosecutor betrays ignorance of the facts of a case, or otherwise fails in the discharge of his duty.

550. Public Prosecutors should be required to examine the committal record and to decide what parts of the record they really require to be copied to enable them to conduct the case properly in the Sessions Court.

Supply of copies of the committal records to Public Prosecutors.

Copies of only such parts of the record as the Public Prosecutors think really necessary should be supplied.

551. Should the District Magistrate be absent from the headquarters of his district when the time arrives for making the arrangements referred to in paragraphs 544 to 550 inclusive, he shall specially delegate his duties to one of his subordinates, who will be held personally responsible foreseeing that the arrangements are duly carried out.

552. Not less than two days before the commencement of Sessions at the headquarters of the Sessions Judge, and, in other cases, as soon as the Sessions Judge arrives at the headquarters of a district in which Sessions are to be held, the District Magistrate or the officer delegated under paragraph 571, should send to the Sessions Judge a nominal list of the cases and of the dates fixed under paragraph 546 for the commencement of each trial.

List of Cases fixed for Trial.

Sessions Trials.

553. In the first week in December in every year Sessions Judges shall fix the number of Sessions to be held in each district of their divisions during the year following and the dates on which respectively the Sessions are to begin, the number varying with the estimated or average number of trials. Sessions will be held at the headquarters of each district.

554. The following is a list of Sessions Divisions and the Districts* comprised in each division :-

Name of Sessions Division and Headquarters.	Name of Districts of which the Sessions Division consists.
1. Akyab	Akyab, Kyaukpyu, sandoway
2. Rangoon	Rangoon Town, Hanthawaddy
3. Insein	Insein
4. Tharrawaddy	Tharrawaddy
5. Prome	Prome, Thayetmyo
6. Bassein	Bassein
7. Henzada	Henzada
8. Myaungmya	Mayungmya, Maubin
9. Pyapon	Pyapon
10. Pegu	Pegu
11. Toungoo	Toungoo
12. Moulmein	Amberst, Salween
13. T haton	Thaton
14. Tavoy	Tavoy, Mergui
15. Mandalay	Mandalay
16. Shwebo	Shwebo, Katha
17. Myingyan	Myingyan, Pakokku
18. Meiktila	Meiktila, Kyaukse
19. Pyinmana	Yamethin
20. Magwe	Magwe, Minbu
21. Sagaing	Sagaing, Lower Chidwin, Upper Chidwin.
† 22. Myitkyina	Bhamo, Myitkyina

* Ministry of Judicial Affairs (General Branch) Notification No. 77, dated the 30th March 1951.

† Ministry of Kachin State (Miscellaneous Branch) Notification No. 3 dated the 18th April 1951.

Expect with the sanction of the High Court, there shall be not less than eight Sessions per year in each district.

555. The arrangements made under the last two preceding paragraphs shall be reported without delay to the High Court for approval; but they may be carried out unless disapproval is communicated.

556. Printed notices of the dates fixed for Sessions shall be supplied in December to the District Magistrate and through him to every Magistrate empowered to commit for trial.

557. Sessions Judges shall report to the High Court every instance in which they fail to commence Sessions on the date fixed, explaining the circumstances in which the failure has arisen.

558. Supplementary Sessions may be held whenever the Sessions Judge finds it expedient to do so, and the District Magistrate may, at any time when he considers an extra Sessions necessary, ask the Sessions Judge to arrange a supplementary Sessions. The Sessions Judge should comply with such request if he can reasonably do so.

No report need be sent to the High Court, but a note should be made on Form Criminal No. 15 when submitting the list of persons committed to the Court of Session whose trial has not been concluded.

559. At each Sessions all persons, other than insane

All prisoners awaiting trial to be produced at Sessions.

persons detained in a lunatic asylum, awaiting trial at the Court of Session, shall be brought before the Judge in open Court; and if the

Public Prosecutor is not prepared to go to trial in any particular case, he shall be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown.

560. Sessions trials must not be lightly postponed. A

Postponement of Trials.

Sessions Judge is not justified in postponing to a subsequent Session cases of which notice has been re-

ceived before the commencement of the Session next ensuing on the ground that the number of days which have been assigned for that particular Session has been filled up.

344, 503, 508. All commitments of which timely notice is received before the commencement of a Session should be disposed of at that Session, unless there is some good reason for postponement. The detention of an accused person in jail is in itself no trivial infliction, and it is only justified when there is apparently a good case against the prisoner, and when the Judge is satisfied that for the ends of justice it is necessary to postpone the trial.

561. The power of a Court of Session to adjourn a trial for the production of further evidence necessary for the ends of justice is discretionary power. It should, as a rule, be exercised when a proper compliance with the provisions of sections 533 and 540 of the Code of Criminal Procedure renders an adjournment necessary, but such adjournments will rarely be necessary in Sessions trials for the ends of Justice if Public Prosecutors and Committing Magistrates perform their duties efficiently.

533,540 562. A Sessions Judge is not competent to return a case for trial by the Magistrate who committed it.

563. x x x x x x x x x x x x x x x x x x x x x x
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564. (1) If the Sessions Judge thinks that the charge framed by the Committing Magistrate should be amended without altering the section he may make the amendment on the Magistrate's charge, and the amendment so made should be attested by the initials of the Sessions Judge. If there is not room to make the amendment legibly a fresh charge on the proper form should be drawn up and signed by the Sessions Judge.

(2) Whenever the Sessions Judge thinks it expedient to add or substitute a fresh charge under a different section, the fresh charge should be drawn up on the proper form and signed by the Sessions Judge.

(3) In every case the diary should contain a note of the fact that the amendment is made, and when a fresh charge is framed the diary should show whether the fresh charge is substituted for, or in addition to, the original charge.

565. It should appear on the proceedings of the Sessions trial that the charge was duly read and explained to the accused, and his plea must be recorded in Form Criminal 94. The accused should be required to plead by his own mouth and not through his advocate.

566. Sessions Judges should bear in mind the procedure laid down in section 310, Code of Criminal Procedure, when the accused is charged with an offence after a previous conviction.

567. If the accused, on being called on to plead, does not admit all the elements which go to make up the charge against him, a plea of not guilty should be recorded. A plea of an accused charged with murder or culpable homicide, which only admits that he killed the deceased is not a plea of guilty. No inference as to the guilt of an accused should be drawn from his plea so long as the plea is not a distinct admission of the charge. Without such admission the charge must be proved.

568. When the accused makes no answer to the enquiry whether he is guilty it should be ascertained whether he is obstinately mute or dumb. If he is found to be obstinately

mute, a plea of not guilty should be recorded.

If he is found to be dumb, it should be ascertained if he is sane or capable of being tried. If he is found sane, a plea of not guilty should be recorded; if insane, the procedure laid down in Chapter XXXIV of the Code should be followed.

569. x x x x x x

x x x x x x x

164, 364, 533

570. (1) Sessions Judges should be careful not to

Admission of Confessions. admit to Sessions record, or to receive in evidence, the statements and confessions of the accused, unless they have

been duly recorded in the manner laid down in sections 164 and 364 or have been duly proved under section 533.

(2) Where there has been no attempt to comply with the provisions of sections 164 and 364, the confession is inadmissible in evidence. It is only where such an attempt has been made, and there is only a formal defect that the provisions of section 533 can be invoked.

(3) Where there are defects, curable under section 533, in recording the confession or other statement of an accused person, it is the duty of the Public Prosecutor to have in readiness and to tender evidence that such person duly made the statement recorded, or to apply for an adjournment or for the issue of a commission to secure such evidence.

571. If an accused person, when produced before the

Retracted Confessions. Sessions Court, retracts a confession previously made and then, for the first time,

accounts for it by charges of improper inducement, pressure or other misconduct against the police or other persons in authority, or if the Committing Magistrate, although such charges were made before him, has failed to comply properly with the directions contained in paragraph 605, the Judge should himself make such inquiry as is possible, and should record his opinion whether the allegations are proved or disproved. If he considers that there are grounds for believing them true, he should bring the matter to the notice of the District Magistrate, with a view to his taking any departmental action that may be necessary (see paragraphs 475 and 600 to 607).

540

572. Whilst the provisions of section 533 are complied with when the Court takes all such admissible evidence as may be tendered under that section, the provisions of section

540 are not complied with if the Court does not (in cases where the Public Prosecutor has failed in his duty in the above respect) of its own motion call for production of any such evidence, or summon any necessary witness on the point, if such evidence appears to it essential to the just decision of the case.

Summoning Additional Evidence.

Evidence Act, 33.

573. Under section 33 of the Evidence Act the deposition taken by the Committing Officer of a witness not present at the trial cannot be admitted as evidence in the Sessions Court unless it is proved that the witness is dead, or the Court is satisfied that for sufficient cause his attendance cannot be procured.

Previous Depositions.

288. Evidence Act, 155.

574. The attention of all Sessions Judges is called to the provisions of section 288, in cases where a witness gives evidence before the Sessions Court which is at variance with that given before the Committing Magistrate. The purpose of that section is to make depositions given before Committing Magistrates evidence for the purpose of the trial in the Court of Session whenever the Judge, in the exercise of his discretion, determines that they are to be used in that way. It is the duty of the Sessions Judge, on observing such discrepancies, to examine the witness in respect of them, especially in cases where the accused is undefended; and, if he adopts this course then he ought, in ordinary case, to make the deposition taken by the Committing Magistrate, on which he has examined the witness, evidence in the case. When he has accepted any such deposition as evidence, it must be detached from the committal record, marked as an exhibit, and attached to the Sessions record. Most Sessions Judges fail to make sufficient or proper use of the provisions of section 288.

Discrepancies in Witnesses' Statement

575. It is open to the Sessions Court to accept as true a statement made by a witness before the Committing Magistrate, although contradicted by the witness in the Sessions Court, if the Judge considers that, from the evidence of the witness given before him, or of other witnesses given before him; the original statement is worthy of belief. The Judge, however, cannot discard altogether the evidence taken before him and convict solely on the evidence recorded by the Committing Magistrate.

576. Where **medical evidence** is necessary, medical witnesses should ordinarily be examined by the Court of Session at the trial. In cases where the attendance of a medical witness cannot conveniently be secured, as for instance where he has been transferred to another station, or where he is a resident of a place at a distance from the place where the Sessions are held, his deposition recorded and attested by the Committing Magistrate can be admitted under section 509, and his personal attendance before the Court of Session should whenever possible, be dispensed with. On receipt of the record of the proceedings before the Committing Magistrate the Judge should consider the deposition of the medical officer and if the case is one in which he thinks it proper that the medical officer should be examined as a witness at the trial, he should without delay take the necessary steps to secure his attendance.

577. The Court of Session cannot direct the prosecution to call or tender for cross-examination by the defence a witness who was examined on behalf of the prosecution in the committal proceedings, but who is not called for examination before the Court of Session because the prosecution has reason to believe that the witness is a false witness, or is likely to give false testimony, or is not in a position to give material information in connection with the offence charged. All that the prosecution can be called upon to do is to have the witness present at the trial so as to give the Court or the defence, as the case may be, an opportunity of examining him. When such a witness is examined as a witness for the defence, the prosecution must be given the right to cross-examine him. *See Nga Aung Gyi and another v. King-Emperor, I.L.R. 14 Ran., 45.*

Witnesses not examined by prosecution to be present at the trial.

578. x x x x x x x x x x x x x x x x x x x x
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579. All statements or confessions of an accused, depositions of Medical Officers and reports of the Chemical Examiner tendered in evidence under sections 509 and 510, and the depositions of witnesses tendered in evidence under sections 32 and 33 of the Evidence Act, should, if received by the Sessions Court, be put in and read **before the accused is called upon to enter on his defence.**

164, 287, 218,
364, 509, 510.

580. When a Sessions Judge admits the confession or examination of an accused person, the deposition of a Medical Officer, or the report of the Chemical Examiner, or the deposition of a witness, he should record on the face of the document over his signature and date of signature as follows: -

Evidence
Act, 32, 33.

" *Admitted under section 287 or 288, or 509 or 510, Code of Criminal Procedure, or section 32 or section 33, Evidence Act* " (as the case may be); and if the deposition is admitted under section 32 or section 33 of the Evidence Act, he must further record his reasons for admitting it on a separate sheet of paper or on the diary.

581. (1) The examination of the accused (if any) by the committing Magistrate should be tendered by the Public Prosecutor and read out at the conclusion of the examination of the prosecution witnesses.

289 (2) When the prosecution case is concluded, the accused must be asked whether he desires to give evidence on his own behalf and he must be warned in the manner provided by section 342 (1). See paragraph 454.

342 (1).

342 (2). (3) If the accused declines to give evidence he should be examined in the manner and for the purposes laid down in section 342 (2).

539 B

582. (1) The Judge, in a case tried without a Jury, may at any time view the place in which the offence charged is alleged to have been

Local Inspection committed, or any other place in which any transaction material to the trial is alleged to have occurred. See paragraph 621.

293.

(2) In a case tried by Jury, if the Judge thinks that the Jury should view any such place, he should make an order to that effect and give notice thereof to the Public Prosecutor and the accused. He should appoint an officer of the Court to conduct them in a body to the place and also appoint a person by whom the place shall be shown to them.

The officer appointed to take care of the Jury will thereupon make all necessary arrangements for taking them in a body to the spot. He shall not, except with the permission of the Court, suffer any other person to speak to or hold any communication with any of the Jury. He shall not allow any other person to travel in the same conveyance with them.

He shall see that the person appointed to show the place does not say anything to them more than is necessary for the purpose of pointing out the spot and shall report to the Judge any breach of this instruction.

The officer appointed to show the spot shall not do or say more than point it out to them. He will point out the places where the witnesses are alleged to have been and also the various places connected with the offence charged, such as houses, wells, tanks, threshing floor and the like, deposed to in the evidence.

The Public Prosecutor or the advocate or pleader for the accused shall not be allowed to make any statements in the hearing of the Jury. They may ask the officer showing the place to point out any other places or things but should only do so in the immediate presence of the Advocate or pleader for the other party. They must express no opinions and utter no argument.

The Judge on making an order to view should invariably explain to the Jury that the order is made for the sole purpose of enabling them to understand the evidence that is laid before them and that they must not use anything they may see there as evidence but must give their opinion on the evidence given before them in Court.

583.	x	x	x	x	x	x	x
	x	x	x	x	x	x	x

371.

584. Sessions Judges are reminded that, when passing a **capital sentence**, it is necessary to inform the person on whom sentence is passed that if he wishes to **appeal** he must do so within seven days; and the Judge should certify on the record that he has informed the prisoner of the period within which his appeal should be preferred. The record should not be submitted for confirmation of sentence until the expiration of seven days from the date of the sentence, unless a copy of the judgment has been furnished for an appeal within that time.

585. When a reference is made to the High Court for confirmation of a death sentence, all the police records including the investigating officer's diaries and statements made by witnesses to the police should be submitted together with the judicial records. The Sessions Judge should see that the police records are complete. A typed copy of the judgment should be filed at the end of the trial record when the original judgment itself is not type-written.

586. Sessions Judges are required to intimate to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs the date fixed for the execution of every prisoner sentenced to death, as soon as a warrant has been issued under section 381 of the Code of Criminal Procedure.*

587. All documentary exhibits or depositions admitted at the trial filed with the committal proceedings should be removed to the Sessions record, a note being made on the former of the papers so taken. If any of such documents, *e.g.*, the deposition of a deceased witness or the deposition of a witness admitted under section 288, is not already included in the list of exhibits, it should be added thereto and marked with the corresponding number.

* Notification No. 12 (General), dated the 9th September 1905.

588. The Committal record should be kept along with the Sessions record, until the case is finally disposed of, when it should be returned to the committing Magistrate through the District Magistrate.

589. In extension of the provisions contained in section 373, Code of Criminal Procedure, it is ordered that, at the conclusion of a trial in a Court of session, the Court shall send a copy of its judgment, finding and sentence, or of the heades of the charge to the Jury, to the District Magistrate for communication to the Committing Court.

590. The judgment of the High Court in appeal from a Court of Session shall be sent in duplicate to the Sessions Court, one to be filed in the Sessions trial record and the other to be forwarded with the committal proceedings to the District Magistrate for transmission to the Committing Magistrate (*cf.* paragraph 794).

Report of Cases of Infanticide.

591. Sessions Judges are directed to report to the High Court all cases in which women are found guilty of murdering their infant children, in order that the Government may consider whether any commutation or reduction of sentence should be allowed under sections 54 and 55 of the Penal Code or under sections 401 and 402 of the Code of Criminal Procedure.

Expenses of Jurors

592.	x	x	x	x	x	x	x
x x	x	x	x	x	x	x	x

Trial by Jury

593.	x	x	x	x	x	x	x
x x	x	x	x	x	x	x	x

401,402,
Penal Code,
54,55.

CHAPTER XXI
EVIDENCE AND WITNESSES.
Statements recorded by the Police.

594. Section 162 of the Code of Criminal Procedure does not apply to an information laid to the Police under section 154. The First Information Report may therefore be proved and admitted in evidence in the following cases :-

- (a) when the informant is dead and the information is admissible under section 32 of the Evidence Act ; and
- (b) when the informant is examined as a witness.

In the former case the information is substantive evidence of the facts stated in it, under section 32 of the Evidence Act. In the latter case the information is not substantive evidence of the facts stated in it, but may be used under section 157 of the Evidence Act to corroborate the testimony of the informant, or under section 145 to contradict him or under section 155 (3) to impeach his credit.

But if the complainant goes back on his complaint and gives a different account in evidence before the Court, his previous report (F.I.R.) becomes inadmissible as there being no substantive evidence for its corroboration. [*K.E. Vs. Nga Hlaing*, (1928). VI I.L.R., Ran., 481].

Only the original foil signed by the informant is admissible in evidence, unless such facts are proved as render a copy admissible under the ordinary rules applicable to the admission of secondary evidence of documents. Paragraphs 1412 and 1418 of the Burma Police Manual, 5th Edition prescribe the submission of the original foil to the Court and this should be insisted on.

595. (1) The provisions of section 162 of the Code of Criminal Procedure must be carefully studied.

Sub-section (1) lays down that a statement made to a police officer during an investigation shall not be used for any purpose at the trial of or magisterial inquiry into any offence which was under investigation at the time when the statement was made, save as provided in the provisos to the section. This applies whether the statement has been recorded in writing or not.

(2) The effect of the section may be summarised as follows:-

(1) Unless the witness has been declared hostile under the provisions of section 154 of the Evidence Act, Witnesses may not be questioned in examination-in-chief as to statements made by them to the police. They may not be so questioned in cross-examination as to any statement not recorded in writing. But they may be cross-examined and re-examined on statements recorded in writing in accordance with the procedure laid down in sub-section(1).

(2) Under sub-section (2) copies of such statements must be furnished to the accused on his request. In simple cases this provision may be complied with by the Court showing the original statement to the accused or his pleader, unless the accused demands that a copy to be given to him, in which event a copy must be given. This applies equally to statements recorded in police diaries. Copies of the statements or of extracts of the statements made to the police may however only be furnished by the Court. The procedure by which the Public Prosecutor is sometimes told to give copies to the defence pleader is a system liable to abuse and is strictly forbidden.

(3) If it is desired to use any part of the recorded statement to contradict the witness his attention should be drawn to that part of the record of his statement. The record can then be proved by the evidence of the police officer who recorded it and should be filed as an exhibit (Section 145, Evidence Act).

(4) There is no legal obligation imposed upon either the Public Prosecutor or the Court to advise the accused to request the Court to refer to the statement of any witness to the police under section 162, but it must ever be borne in mind that it is the duty of the Public Prosecutor and any other official who may be conducting a prosecution to prosecute, not to persecute, the accused, and that responsibility rest upon him not to allow the Court or Jury to place reliance unwittingly upon the evidence of a witness who to his knowledge made a contradictory statement to the police in the course of the preliminary investigation, and in such circumstances he ought to inform the Court that it might be expedient that the accused should be made aware that he would be entitled to be supplied with a copy of the witness's statement to the police if he made a request to the Court in that behalf.

Further, There is nothing in section 162 which prevents the Court, if in its discretion it elects to do so, from informing the accused of his right, for the purpose of contradiction the evidence of the witness, to request the Court to refer to the previous statement of the witness to the police, and to supply the accused with a copy thereof as provided in the section ; or, if the accused makes a request to the Court in that behalf, to prevent the Court from pointing out to the accused, if it chooses to do so, any passages in the statement which may appear to be material for the purpose in hand. On the other hand, merely because the Court thinks it well to inform the accused of his rights under the section it does not follow that it would be prudent for the accused in every case to ask for a copy of the statement ; and it is for the accused, and not for the Court, to decide whether the accused should exercise the right given to him under section 162.

(5) When a witness has thus been cross-examined on the record of his statement to the police, the prosecutor or the accused may re-examine him on it, but only for the purpose of explaining any matter referred to in the cross-examination.

(6) Except for the purpose of proving a recorded statement as above provided, investigating police officers may not be examined as to statements made to them by witnesses, other than statements in the first information report and statements of which evidence is admissible under section 22 of the Evidence Act.

Subject to this restriction they may, and in suitable cases should, be examined as to the general course of their investigation.

(7) Section 27 and section 32, clause (1), of the Evidence Act are expressly exempted from the operation of Section 162. Consequently statements made to the police by a deceased person as to the cause of his death, or as to any of the circumstances which resulted in his death, may be proved in cases in which the case of that person's death comes into question. Also evidence to any information received from an accused person, which falls within the provisions of section 27, may be given.

596. Under section 172 any Criminal Court may send for the special police diary of a case under inquiry or trial in such Court, and may use the diary 'not as evidence, but to aid it in such inquiry or trial'. It may, for instance, be of importance in a case that the Court should know when a witness first made a statement in connection with the case, or whether any particular person made or did not make a statement. Neither the accused nor his agent is entitled under the section to see the special diary for any purpose unless it has been used by the Court for enabling the police officer who made it to refresh his memory or for the purpose of contradicting him. Police officers ought not to include statements of witnesses in the police diaries.

Dying Declarations.

597. Any person may record a statement made in his hearing by another person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. But where the statement is recorded by any person other than a Magistrate authorized to record a statement under section 164 (1) of the Code of Criminal Procedure the statement must be duly proved and cannot be tendered in evidence under section 80 of the Evidence Act.

164.

598. (1) When a Magistrate records the statement of a dying witness under section 164, the accused should be present if it is possible to procure his attendance. The Magistrate should assist the accused to make his cross-examination as full and complete as possible. If any police special diaries are available the Magistrate should read them, as they may suggest important questions to put to the witness. The deposition should show on the face of it the time and place at which it was recorded, the names of the accused persons who were present or the fact that none were present, and the official designation of the Magistrate under his signature.

(2) In cases where a dying deposition is recorded through an interpreter, if the accused is not present on the occasion, the interpreter should be required to make a statement to the effect that the dying deposition as recorded is a true and correct interpretation of the words of the witness. This statement should be recorded immediately after the dying deposition has been recorded.

(3) A miscellaneous proceeding should be opened, in which should be filed the dying deposition, and on the cover of which should be noted the number and description of the Regular Trial in which the dying deposition is admitted as evidence. This miscellaneous proceeding should be registered in Crimianl Register No. II and its number should be noted in the diary of the Regular Trial.

Statements made to a Magistrate during investigation.

164.

599. (1) Section 164, Code of Criminal Procedure, does not empower a Magistrate to 'hold an inquiry' into an offence under investigation. It merely empowers him to record a statement of a person who is desirous of making it. A Magistrate has no authority under the section to require the attendance of any person or to examine any person and there is no obligation on any person to make a statement to him. A statement recorded under section 164 is on an entirely different footing to a statement recorded by a Police Officer under section 161, as under the latter section the person examined is compelled to make a statement whereas under section 164 any statement recorded must be a statement voluntarily made.

(2) The section was never intended to enable the Police, as it were, to put seal on the statement of a person by sending that person before a Magistrate practically under custody to have him examined before the trial and therefore compromised in his evidence when judicial proceedings are regularly taken.

The 'statements' contemplated by section 164 are 'voluntary statements', and the intention of the section is that the persons making the statements should appear before the Magistrate voluntarily. It is an abuse of the section for the police to produce witnesses before a Magistrate, or to direct them to appear before a Magistrate for the purpose of having their statements recorded under this section, and Magistrates should record such statements only if they are satisfied that the person who appears before them does so voluntarily, and wishes to have his statement recorded. Under this section a Magistrate has no authority to examine the person, but only has authority to record his authority to record his voluntary statement.

Evidence
Act 32.

(3) As regards the use which can be made of a statement recorded under section 164, such a statement cannot be used as substantive evidence of the facts stated in it unless, of course, it is itself a relevant fact under section 32 of the Evidence Act. It can be used only for contradicting the evidence given at the trial by the person making the statement. A person making a statement under section 164 may be put on oath if he is not an accused. A person can be convicted under section 193, Penal Code for contradictory statements made under section 164 and subsequently in evidence in the regular trial, but in order to support such a conviction it would be necessary to prove that the statement purporting to have been made under section 164 was made voluntarily.

Confessions and Statements of Accused.

164. 600. Failure of justice is liable to result from neglect of the precautions required by law to secure a correct and trustworthy record of confessions or examinations of accused persons. When any Magistrate fails in his duty in this respect, his explanation should be called for by the Superior Court before which his proceedings come and should be attached to the record. If the explanation is unsatisfactory and the Superior Court considers that it cannot dispose of the matter itself it should report the case to the High Court.

164, 342, 364. 601. Confessions by accused persons may be made in the course of an investigation, before the commencement of a Magisterial enquiry or trial, or they may be made during the enquiry or trial when the accused are examined. Section 164 relates to the former, section 342 to the latter, and section 364 to both.

164, 364.

602. The following rules for the recording of confessions of accused persons otherwise than in the course of an enquiry or trial have been made with the sanction of the President of the Union.*

Rules.

(1) Ordinarily and unless there are exceptional reasons to the contrary, as for instance when an open record would be detrimental to the public interest or such procedure would cause unreasonable delay, a confession should be recorded in open Court and during Court hours.

(2) A confession may be recorded by the Magistrate who will enquire into the case with a view to committal. Though it is not illegal for Magistrate who has recorded the confession of an accused, to try him subsequently, it is highly objectionable and improper for him to do so. It cannot be recorded by an Honorary Magistrate or by a Magistrate of the third class or, unless specially authorized by the President of the Union in this behalf, by a Magistrate of the second class. A Magistrate of the second class should not be recommended for powers under section 164 unless there is a real necessity for a Magistrate so authorized in the township in which he is stationed.

(3) In order to ensure compliance with the provisions of sections 164 and 364 of the Code of criminal Procedure, Form Criminal 69 has been prescribed for use by every Magistrate recording a confession. The Magistrate must exercise the utmost care in entering all the details required by the form. It is his duty to satisfy himself in every reasonable way that the confession is made voluntarily, and with this end in view he should endeavour to ascertain the exact circumstances leading up to the confession, the length of time during which the accused has been in the custody of the police and whether any action on the part of the police may have induced the accused to confess. He should, whenever feasible before recording the confession of the accused give him a few hours for reflection in circumstances in which he cannot be influenced by the police.

* Notification No. 6 (General), dated the 19th September 1946, as amended by Notification No. 2 (General), dated the 25th February 1948.

He should not invite complaints of police ill-treatment, though of these, if spontaneously made, cognizance should of course be promptly taken, but it should be made clear to the prisoner that the making of a statement or not is within his discretion, and any indications of the use of improper pressure should at once be investigated.

(4) The Magistrate should not cross-examine the accused, but should remember that the more detailed a confession is the greater are the chances of correctly estimating its value, and should do his utmost to elicit from the accused a full and detailed statement of all that he knows, relevant to the offence committed, and to ascertain whether he is able and willing to point out or identify any place, person or thing in support of his statement.

(5) When the confession is being recorded, none of the police who has been concerned in the accused's arrest or in the investigation of the case should be allowed to be within sight or hearing of the accused. No police officers should be present except such as may be necessary to secure the safe custody of the accused.

(6) The Magistrate should add to the certificate required by section 164 of the Code of Criminal Procedure, a statement in his own hand of the grounds on which he believes that the confession is genuine.

(7) Once an accused person has been taken before a Magistrate to make a confession, the existing remand shall cease to be valid and a fresh remand shall be given by that Magistrate only.

(8) An accused person who has made a confession should, wherever possible, be remanded to jail and never to a police station other than the station at the headquarters of a district, unless the accused has stated to the Magistrate in his confession that he is able and willing to point out or identify any place, person or thing in support thereof. A police officer asking for a remand to other than jail custody should be required definitely to state the object of such a remand and a general statement that the accused may be able to give further information should not be accepted. The period of the remand should always be as short as possible.

(9) When the police take an accused person who has confessed to point out or identify any place, person or thing in support of his confession, they shall, whenever it is possible, be accompanied by a Magistrate, who should, whenever possible, be the Magistrate who recorded the confession.

(10) An accused person, who has been produced for the purpose of making a confession and who has declined to do so or has made a statement which is not self-incriminating, should in districts where there is a jail be remanded to the jail and in other districts to the police-station at district headquarters.

(11) When an accused person who has made a confession is remanded to jail, a note of the fact of his confession and a request that he should, if possible, be kept entirely apart from all other prisoners should be entered on the warrant.

(12) A confession should be filed in a miscellaneous proceeding. Any written communication made to the Magistrate by the police regarding the wish of the accused to make a confession should be filed with it.

164 (3). **603.** It is necessary to warn an accused before recording his confession that he is not bound to make a confession and that if he does so it may be used in evidence against him.

364. **604.** (1) When a confession is taken under section 164, it must be recorded in the manner prescribed in section 364 to which attention is specially directed. Under that section whenever the accused is examined -

- (a) the whole of such examination,
- (b) including every question put to him, and
- (c) every answer given by him, must be recorded,
- (d) in full,
- (e) in the language in which he is examined ;
- (f) in cases in which the examination of the accused is not recorded by the Judge or Magistrate himself, he is bound as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English.

(2) Under section 164 read with section 364, Code of Criminal Procedure, it is necessary that each question and answer should be recorded separately.

When the confession is taken in one continuous narrative, contrary to the provisions of the Code, no presumption of genuineness arises under section 80 of Evidence Act, and the confession as it stands is not admissible as evidence. The Court should, in such a case examine the Magistrate who recorded the confession, under sub-section (1) of section 533, Code of Criminal Procedure. He should be asked to state so far as he can remember the nature of the questions put to the accused. It is desirable to ascertain whether any leading questions were put and whether the Magistrate at the time of recording the confession had any knowledge from other sources of the facts of the case and of the facts which the accused might be expected to state. The accused should be present at the examination of the Magistrate and should be given an opportunity of cross-examination.

(3) When a confession has been recorded in accordance with law, the provisions of section 80 of the Evidence Act apply, and the presumption arises that the record of the confession is genuine. Consequently the confession proves itself, and it is unnecessary to examine the Magistrate who recorded the confession as witness.

605. If an accused, on being brought before a Magistrate Retracted Confessions. either for inquiry with a view to commitment or for trial, retracts a confession previously made and accounts for making it by charges of improper inducement, pressure or other misconduct against the police or other persons in authority, the Magistrate is bound to give him an opportunity of proving his allegations. It is of the greatest importance that accusations of the kind mentioned brought against the police should invariably be thoroughly sifted. It is the duty of the Magistrate not only to examine such witnesses as the accused may be able to produce, but to call any witnesses whom he himself may have reason to think able to give evidence in the matter, and to hold a searching inquiry into the allegations. He must invariably record in his order his opinion whether the allegations have been proved or disproved, and if he considers that there are grounds for believing them true, he must report the matter to the District Magistrate, with a view to his taking any departmental action that may be necessary (*cf.*, paragraphs 475 and 571).

606. Statements other than confessions taken under section 164 must be recorded in such of the manners prescribed for recording evidence as in the opinion of the Magistrate is best fitted for the circumstances of the case.

607. Confessions should not under any circumstances be treated as correspondence. A confession, as soon as possible after it is recorded, must be made into a miscellaneous proceeding, on the cover of which should be noted the number and description of the Regular Trial (if any) in which the confession has been filed. This miscellaneous proceeding should be registered in Criminal Register No. II and its number noted in the diary of the Regular Trial. Such proceedings should not be handed over to the Police, but a District Superintendent of Police may apply to the District Magistrate for permission to inspect the proceedings.

Attendance and Examination of Witnesses.

608. The evidence of witnesses shall be recorded as soon as possible after their attendance. If an adjournment of a case is necessary without examining the witnesses in attendance, they should be examined, as a rule, at the first sitting of the Court on the following day. *See also paragraphs 460 to 466.*

609. Every witness must be examined *viva voce* in open Court, and a Judge or Magistrate must not be engaged in any other business while the examination of witnesses is going on. All evidence must be taken in the presence of the accused, or his pleader when his personal attendance is dispensed with.

Medical Witnesses.

610. In order to reduce the inconvenience resulting from the summoning of medical officers away from their stations to give evidence in criminal cases, the following instructions are issued for the guidance of Magistrates : -

(1) In cases where the trial Court sits at a station other than that where the medical witness is stationed he may, whenever the case admits of it, be examined by a Magistrate at the place where he is stationed. Similarly, whenever a Magistrate is about to send a case in which medical evidence is required to another station for disposal he should, before doing so, read the report of the medical officer, and if it appears to him that the personal attendance of the medical witness at the trial will not be essential, he should, if the medical witness is stationed at the place where he is sitting, examine him in the presence of the accused under section 509, Code of Criminal Procedure.

It depends on each case whether or not the trial Court can dispense with the appearance of the medical witness before it. In simple cases, where the medical evidence is practically formal, it will not ordinarily be necessary to summon the medical witness, but where a full knowledge of the facts of the case is essential and where the medical witness must be examined in detail on points other than the mere description of injuries, the Magistrate who hears the case must usually examine the medical witness.

A committing Magistrate must, subject to the provisions of paragraph 529, always examine the medical witness in committal cases.

(2) The medical witness should not as a rule be summoned or sent up by the police at the first hearing with the other witnesses. The trying Magistrate should examine the record and the medical report and should in each case pass a definite order as to whether he is to be summoned or not, and as to how his evidence is to be taken if it has not already been taken.

If he is to be summoned, he should be called when most of the evidence for the prosecution has been recorded and when a charge is to be framed or after it is framed so that he can be cross-examined at once.

(3) Magistrates should, when possible, arrange with the medical witness direct the hour and date of his attendance, and no avoidable delay should occur in examining him when he appears. Early notice should be given to him if a case is postponed, and when he appears no adjournment should, save in very exceptional circumstances, be granted till he has been examined.

(4) The instructions contained in paragraphs 530 to 533 inclusive must be carefully followed in the examination of medical witnesses.

(5) These instructions apply not only to cases which are sent from outstations to the District or other specially empowered Magistrates at headquarters for disposal or for orders in accordance with paragraph 690 (2), but to all cases which are sent for disposal to any Magistrate in another station.

611. All Magistrates should bear in mind that the absence of a medical officer from his station may be attended with grave consequences to persons in need of medical aid. The summoning of medical witnesses who have been transferred to other districts is often particularly objectionable, and Magistrates should constantly endeavour to make arrangements which will render such a course unnecessary. In some cases it may be possible for the medical officer, if he is known to be under orders of transfer, to be examined before his departure under section 509, Code of Criminal Procedure, even though the case as a whole cannot be heard at the same time ; or if the medical witness has actually left the station, the necessary evidence may sometimes be suitably obtained by the issue of a commission under section 503 or section 506. If a Magistrate has several cases pending before him in which the examination of a medical witness who has been transferred is necessary, it should generally be possible to arrange for his examination in all the cases at one visit.

It is not intended to suggest that the interests of justice should be sacrificed in any way ; it must necessarily be left to the Magistrate himself to judge whether the actual attendance of the medical witness is likely to be required. It should be understood, however, that a medical officer from another station should not be summoned as a matter of course at the same time as the other witnesses in a case, but that the Magistrate should give his personal attention to the question whether the attendance of the medical witness cannot be dispensed with, or to the making of such an arrangement as will best suit his convenience.

Taking and Recording of Evidence.

360(1)

612. As the evidence of each witness taken under section 356 is completed, it must be read over to him in the presence of the accused or of his pleader so that they can hear it read over and give their undivided attention thereto. The section does not require the Judge or Magistrate himself to read the deposition over to the witness. It may be read to him by the Judge or Magistrate or by an officer of the Court, but it must not be handed over to the witness to read himself. When the deposition has been read over to the witness, he should be asked by the Judge or Magistrate himself whether it is correct. If the witness admits the correctness of the record, or when any necessary corrections have been made at the instance of the witness, the Judge or Magistrate shall certify to this effect at the foot of the record.

Some such words as "Read and acknowledged correct" over the signature are sufficient and suitable. Although the law does not explicitly require that this certificate should be appended to a deposition, the Hon'ble Judges consider it desirable to prescribe this procedure as a rule of practice by all subordinate Courts. The accused or his pleader may be allowed to draw attention to inaccuracies in the deposition of the witness, but they are not entitled to the opportunity of suggesting corrections in the record.

613. A Magistrate should add the figure (1), (2) or (3) after the word "Magistrate" to show the class of Magistrates to which he belongs. A District or Subdivisional Magistrate should sign as such, and the latter should also indicate by the figure (1) or (2) whether he is of the first or second class.

The date on which the certificate is signed should be noted immediately below the signature of the Judge or Magistrate.

614. Magistrates sometimes adopt the practice of treating the evidence in one case as evidence in another. The usual method appears to be to examine witnesses who appear in both cases once only, and to file in one case a carbon copy of their evidence in the other. Whether or not the two cases are cross-cases, this procedure is contrary to law and the practice must not be adopted.

355 615. The cases in which a memorandum of the substance
 Memorandum of of the evidence is sufficient are specified
 evidence. in section 355. It should be noticed that
 this section does not refer to the record of evidence in summary
 trials. The reference is to cases which may be, but are not, tried
 summarily.

356.

616. In all inquiries and trials, other than summary trials and the trials mentioned in section 355, the Magistrate or Judge, under the provisions of section 356 of the Code of Criminal Procedure, shall take down the evidence in the language of the Court with his own hand, or cause it to be taken down in writing in the language of the Court from his dictation and under his personal direction and superintendence. All evidence must be recorded in open Court. Depositions must be signed by the Magistrate or Judge. (*See* paragraph 35.)

Mode of recording
evidence by Sessions
Judges.

359.

617. Evidence should ordinarily be taken down in narrative form; but the Judge may take down any particular question and answer. Evidence should be recorded in the first person. When a witness repeats anything said by another person, the actual words used should as nearly as possible be repeated. Thus a witness should not be allowed to say: "The accused said he had done it." The proper form is: "The accused said: I did so and so."

In recording evidence it is essential to mark clearly the beginning of each stage of the examination of the witness, *i.e.*, examination-in-chief, cross-examination, and re-examination.

Evidence of identi-
fication.

618. In recording evidence regarding the identification of exhibits or of accused persons produced before the Court, the exhibits or the accused should be shown to the witness in the Court, and it should first be definitely recorded in the evidence that the witness has examined them in Court and has in Court testified to their identity, and his reasons for being able to identify them should be recorded. Then should follow the evidence of other occasions, since the occurrence of the offence, on which the witness has seen and identified these exhibits or accused persons, this being merely corroborative of the primary evidence that the witness is able to identify them before the Court.

When there is no explicit statement that the witness is able to identify the exhibits or the accused before the Court, but merely evidence to the effect that he has identified them on some previous occasion or occasions, out of Court and not on oath, it has to be implied from that the witness also intended to identify them in Court. It would often be difficult to justify such an implication, and it should never be necessary to have to resort to it. Moreover, a mere statement of a witness himself, that he succeeded at some test of his ability to recognise the exhibits or the accused, is not very strong corroboration of his own statement that he is able to identify them in Court. Such evidence should also be given by other persons who witnessed the test, and their evidence is then of considerable value to corroborate the identification by the witness made before the Court.

619. In criminal trials in which part of the evidence is the finding of clothes, etc., stained with human blood the size of the blood-stains is frequently of great importance. When an article is sent to the Chemical Examiner for examination, the stained portions are usually cut out and it is impossible to tell whether the size of the stains was the same as that of the portions removed. Moreover, the appellate Court has not even the mutilated article before it, and the report of the Chemical Examiner never sets out the extent of the stains which were found. Sessions Judges and Magistrates should therefore be very careful in all cases in which blood-stained clothing, etc., forms a part of the evidence to record evidence as to the size of the stains.

363. 620. If the Judge or Magistrate thinks any remarks respecting the demeanour of a witness whilst under examination are material he is bound to record them. This should be done immediately when the deposition is signed, so that the fresh impression made at the time, and not a later impression induced by reflection on other circumstances, may be preserved.
- Remarks on demeanour of witness.

Local Inspection.

- 539 B. 621. (1) A Judge or Magistrate may, at any stage of the proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been

committed, or any other place which it is necessary in his opinion to view for the purpose of properly appreciating the evidence given before him.

(2) When such inspection is made, the Judge or Magistrate must at once record a memorandum of any relevant facts observed at the inspection. This memorandum shall form part of the record of the case, and a copy thereof must be furnished, free of cost, to the Public Prosecutor, complainant or accused, on application.

(3) In the case of a trial by jury the Judge cannot make a local inspection unless the jury are also allowed a view. *See* paragraph 603.

Commissions for Examinations of Witnesses.

40. 503, 508.

Issue and Execution
of Commissions.

506.

622. No Court below that of a District Magistrate can issue, and no Magistrate of a class below the first can execute a commission for the examination of a witness. If any Magistrate other than a District Magistrate thinks the issue of a commission desirable or necessary, he must apply to the District Magistrate stating the reasons for the application.

508 A.

Commissions to and
from foreign countries.

623. The provisions relating to execution of commissions issued in criminal cases to and from foreign countries are laid down in sections 503 (3), 505, 507 and 508 A of the Code of Criminal Procedure as amended by the Code of Criminal Procedure (Amendment) Act No. XLV of 1954. [*See* Ministry of Judicial Affairs Notification Nos. 305 and 306, dated the 11th August 1955, reproduced in Appendix V (II).]

624. In criminal cases, Commissions or Letters of Request to obtain evidence cannot be issued except under Chapter XL of the Code of Criminal Procedure. Apart from the special provisions contained in Chapters XL and XLI of the Code of Criminal Procedure, all evidence against an accused person must be given in his presence in open Court. Consequently Commissions or Letters of Request for the examination of witnesses in criminal cases cannot be issued to any foreign country. Such evidence,

even if recorded on commission taken in a foreign country, would not be receivable as evidence at the trial of the accused. Where a witness is residing in a foreign country within a reasonable distance from the Court, the Court should seek the assistance of the Government in attempting to procure the attendance of the witness.

Medical Evidence.

625. Some Magistrates neglect to examine medical officers properly to ascertain whether injuries amount to grievous hurt or not.

The instructions at the foot of page 3 of Police Form 75 are intended for the assistance of the police in framing their final reports, but when the case comes into Court it is not the duty of the medical witness to classify hurts. The Magistrate should elicit from him all facts that have any bearing on section 320, Penal Code, and then the Magistrate should himself decide whether the hurt is grievous or not. It is not for the witness to say "I classify the hurt as grievous " but "I found the bone partially cut through," or "A chip was cut off the bone," or "The thumb was dislocated," or "I considered the patient's life was in danger for a day and a half because" or "The patient was discharged on 7th June, but he would not be fit to reap for another week," or so forth.

The instructions in paragraphs 530 and 532 should, in so far as they are applicable, be followed whenever a medical witness is examined.

626. Medical evidence relating to the injuries and the condition of patients admitted into hospitals is frequently given not by the medical officer who actually attended on the patient, but by some other medical officer who makes his statement by referring to the history sheet and temperature chart prepared by the officer who actually attended on the patient. Such a statement is merely hearsay and is not admissible in evidence.

An entry in a hospital record of a case (*e.g.* the "history sheet") is not an entry in a public record within the meaning of section 35, Evidence Act, but it is an entry made in the course of professional duty under section 32 (2), and if the medical officer who made the entry cannot appear as a witness himself (for any of the reasons given in section 32) the entry may be proved by anyone acquainted with his handwriting.

But in the ordinary course the medical officer himself who made the entry should of course appear as witness and be examined orally, and if he appears he can bring with him and refresh his memory (under section 159) from the hospital records.

627. Care must always be taken to connect the evidence of the medical officer with the report, if any, of the Chemical Examiner in the case. If the medical officer examined the complainant's injuries, he should be asked to identify the complainant at the trial. If his evidence has reference to the examination of a corpse, it must be shown by a connected chain of evidence that the corpse which he examined was that of the person whose death is the subject of the inquiry.

Chemical Examiner's Report.

628. The procedure in sending things for chemical analysis is prescribed in Judicial Department "G" Circular No.15 of 1930 as subsequently amended by "G" Circular No.60 of 1930, reproduced below :-

(1) Articles which require examination by the Chemical Examiner should be sent by the Police Investigating Officer direct to the Chemical Examiner. They should not be sent through the Civil Surgeon or the Police Surgeon unless exceptional circumstances require such a course. After the examination has been completed, the Chemical Examiner should return the articles direct to the Police Investigating Officer from whom they were received.

(2) Before the article is despatched to the Chemical Examiner it must be packed in the presence of the Police Investigating Officer, who must seal it personally with a special seal to be used for this purpose only. A letter in Burmese or English describing in detail the contents of the packet, and, if necessary, the alleged contents of the articles, *e.g.*, " six small bottles said to contain cocaine, " and a short history of the case, including the section of the Penal Code or of any other Act under which the case is instituted, must

be despatched by registered post or by peon, as the case may be, simultaneously with the packet, in which should be enclosed a duplicate copy of the letter.

A specimen of the seal used in packing the articles should be enclosed with the original copy of the letter which is sent in a cover separate from the packet. The sealed packet and the letter should then be placed in an outer cover on which the Police Investigating Officer must sign his name. In cases in which the packet can be taken by bearer to the Chemical Examiner's office the Police Investigating Officer should hand it over to some responsible person for delivery to the Chemical Examiner personally. In other cases the article should be sent by registered post direct to the address of the Chemical Examiner. It should be stated in the letter whether the packet is sent by registered post or by bearer, and in the latter case the bearer's name should be entered in the letter.

(3) On receipt the Chemical Examiner should first note the marks or number and the signature on the outer cover of the packet. He should then see whether the seals on the inner cover are intact, should note the impressions upon them, and compare them with the specimen of the impression forwarded with the letter. If he is satisfied that these are in order, he should open the inner cover and compare the contents with the description given in the letter. If no specimen of the impression is received, the article should be refused and returned. If there is more than one article the seals on each should be separately examined and noted. The result of these observations should be recorded at the time in a note-book under the appropriate date.

(4) The articles should be returned by the Chemical Examiner only to the person from whom they were received and to no other person. The Chemical Examiner should at the same time write a separate letter containing (i) the impression of the seal used by him in sealing the packet and a description of the contents of the packet, (ii) a list of the articles returned and a statement of the method of despatch, (iii) his report concerning each article examined. The articles should be packed in the manner described above.

(5) When articles are returned by post, the rules for the transmission of articles by post (*see* Article 248, Burma Medical Manual) should be observed.

(6) The report on articles examined should be drawn up as nearly as may be, in the following form :-

Report No. of the the Chemical Examiner to the Government of the Union of Burma, upon submitted to him for examination and report by analysis

The ^{was} received by me ^{through the post} on the day of a about ^{were} ^{a.m.} ^{p.m.}

I examined the label on the packing cover and found that it purported to bear the signature of

I examined the seal impressions on the and, as far as I could judge, they were intact and corresponded with the impression of the seal stated by in his letter to me, No. , dated the to have been used by him in closing the

After examining and analysing ^{the} the contents of the I report thereon as follows : -

Chemical Examiner to the Government of the Union of Burma

(7) The Chemical Examiner should make a special report to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs of any cases in which parcels received from Police Investigating Officers are improperly packed, or in which the forwarding letter is incomplete, or does not agree with the contents of the packet.

(8) In cases in which a Magistrate or Judge considers it necessary himself to send articles for examination to the Chemical Examiner, a similar prodecure must be followed. Form Criminal 77 should be in submitting articles for examination. The articles must be packed in his presence sealed by him personally with the seal of his Court, and despatched direct either by registered post or by bearer to the Chemical Examiner, who in returning them will return them direct to the Magistrate or Judge from whom he received them.

(9) The correct establishment of the identification of articles sent for chemical analysis is essential. In all cases the Police Investigating Officer who despatched the articles must be examined as a witness, and when the article is sent by bearer, the bearer must also be called as a witness to prove that the article which he handed over to the Chemical Examiner is the article which was handed over to him for delivery. When articles are sent by post evidence should be adduced to prove that the article was posted. It is desirable to reduce as far as possible the number of person whom it is necessary to call as witnesses as to the identity of articles, and therefore it is essential that they should pass through as few hands as possible. Consequently Police Officers should not delegate their duties in this should be handled personally by the Chemical Examiner, and should pass through as few hands as possible in his office. It should be remembered that if an article passes from one clerk to another, either in the Police office or in the Chemical Examiner's office, it becomes necessary to call each of those clerks as witnesses to establish its identity.

629. Form Criminal 77 should be prepared in triplicate. One copy should be kept as an office copy and placed on the record of the case in connection with which the article is submitted. The second copy should be forwarded together with a specimen of the seal used for sealing the article prior to its despatch, in a separate sealed cover to the Chemical Examiner. The third copy should be packed carefully between the article submitted and the outer covering of the packet.

630. The appointment of an officer to the gazetted post of Chemical Examiner or Assistant Chemical Examiner for Customs and Excise made in the ordinary way is sufficient to constitute that officer a Chemical Examiner or Assistant Chemical Examiner to Government for the purpose of section 510 of the Code of Criminal Procedure. Consequently the provisions of that section apply to their reports in any criminal case.

Documentary Evidence.

631. For orders and instructions regarding documentary evidence, see Part II, paragraphs 49 - 59, and Part V, paragraphs 1075 -1086.

Payment of Expenses to Complainants and Witnesses.

632. The following rules have been made by the President of the Union* under the provisions of section 544 of the Code of Criminal Procedure, for the payment of the expenses of complainants and witnesses attending any Criminal Court in Burma for the purpose of any enquiry, trial, or other proceeding before such Court under the said Code :-

I. The Criminal Courts may at their discretion pay, according to the scale set forth in Rule III, the expenses of complainants and witnesses either for the prosecution or for the defence -

(1) in all cases which are cognizable by the police;

[NOTE. - In cognizable cases which are instituted on direct complaint Magistrates should not pay the expenses of complainants and witnesses when the prosecution is instituted in furtherance of a private dispute between the complainant and the accused and such expenses should rarely be paid in cases of complaints of offences under section 440 or section 447, Penal Code, relating to damage to crops or trespass to agricultural land, as such cases are usually of a quasi - civil nature.]

(2) in all cases entered in column 5 of the Schedule II as not bailable;

(3) in all cases in which witnesses are compelled to attend the Court under sections 94, 103, 208, 217, 257 and 540 of the Code of Criminal Procedure; and

(4) in all cases where the prosecution is instituted or carried on by, or under the orders or with the sanction of Government or any Judge, Magistrate, or public officer or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of public justice.

* Judicial Department Notification No. 7, dated the 3rd January 1923, as amended by Notifications No. 3, dated the 2nd January 1929; No. 105, dated the 9th April 1930; No. 490, dated the 21st December 1931; No. 49, dated the 13th February 1934; No. 123, dated the 4th April 1934; No. 168, dated the 21st May 1934; No. 191, dated the 11th June 1934; No. 297, dated the 4th September 1934; No. 337, dated the 8th October 1934; No. 65, dated the 15th March 1937 and No. 164, dated the 20th March 1948.

II. Expenses of complainants and witnesses shall be payable, according to the scale set forth in Rule III, on account of their journeys to and from the Court and for the days during which they have been absent from their homes for the purposes of the trial proceedings, etc., :

Provided that -

- (1) a Government servant whose salary exceeds K 10 per month giving evidence in his official capacity -
 - (a) When giving evidence at a place more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance ;
 - (b) When giving evidence at a place not more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance, on which he may claim only the actual travelling expenses he has incurred from the contingent allotment of the head of his office.
- (2) A Government servant whose salary does not exceed K 10 per mensem giving evidence in his official capacity shall receive his expenses from the Court.
- (3) A Government servant giving evidence in his private capacity shall receive actual travelling expenses under these rules and shall also receive subsistence, special or expert allowances.
- (4) In cases in which the Magistrate acquits the accused under section 245 or section 247 of the Code of Criminal Procedure, and is of opinion that the complaint was frivolous or vexatious, the expenses of the complainant shall not be paid.
- (5) A servant of a local authority giving evidence in his official capacity shall not be paid witness fees but shall be given a certificate of attendance.

- (6) A member of a local authority, unless debarred by some other rule, *e.g.*, if he is a Government servant, shall, in all cases, be entitled to receive witness fees as a private person.

[NOTE. 1. - Whenever the expenses of a Government servant summoned as a witness in his official capacity have to be deposited in advance, the term "expenses" shall be interpreted to mean the travelling and handling allowances admissible under Civil Service Regulations]

[NOTE. 2.- Any fees or expenses which may be deposited in cases falling within *proviso* 1 (a) shall be credited to Government under the head XVII-Justice - D. Miscellaneous Fees and Fines-b. Miscellaneous Fees and Fines.]

- III. The scale of expenses payable shall be as follows:-

Subsistence Allowance	Travelling Allowance
K 3.15	Actual Travelling Expenses.

The abovementioned amendment must be enforced with effect from the 1st October, 1966.

- IV. Allowances shall be paid under the orders of the Court, and in the presence of the presiding officer, and ordinarily at the conclusion of the trial, enquiry, or other proceeding. The presiding officer of the Court shall check the statement of charges and will be responsible that unauthorized charges are not allowed:

Provided that, for sufficient reason, the Court may direct that the said allowances shall be paid to the person summoned at the time of serving the summons.

[Note. - This rule does not apply to the High Court, Rangoon, where the charges are passed by the Clerk of the Court and the payments are made by the Account.]

- V. In cases committed to the Court of Session, or to the High Court, the Magistrate who commits the case shall note in the list of witnesses the class to which in his opinion, each belongs.

633. (1) Under the note to Rule (i) of the rules relating to the payment of expenses to complainants and witnesses in paragraph 632, the Court has a discretion to order that witness expenses shall not be paid in cases instituted on direct complaint, even when the offence complained of is cognizable. In summons cases the Magistrate may, under section 244 (3), Code of Criminal Procedure, require that the witness expenses be deposited in Court before the summons is issued. The procedure when witnesses are summoned for failure to deposit expenses, under section 244(3) of the Code of Criminal Procedure, is to acquit the accused under section 245 (1) because the alleged offence has not been proved.

(2) In warrant cases section 544 of the Code of Criminal Procedure does not allow the Court to demand payment of witness expenses in *advance* from the complainant before the issue of process is allowed. The effect of this section combined with the rules in paragraph 632 is that in non-cognizable or bailable *warrant* cases instituted on complaint the expenses of witnesses will have to be paid by the complainant after they have been discharged, while in other cases the Magistrate has a discretion to refuse to order payment by Government of any witnesses whom he thinks to have been unnecessarily summoned, or to have given false evidence.

634. Rule IV of the Rules for the payment of expenses to witnesses, reproduced in paragraph 632, says that the allowances shall be paid ordinarily at the conclusion of the trial. It does not of course mean that witnesses shall not be paid for each attendance. It means that if they attend and are examined they shall not be paid at the conclusion of the evidence of each witness, but at the conclusion of the trial (or more usually at end of the day's hearing).

Whenever a case is adjourned without examining witnesses who are in attendance these witnesses should be paid their expenses for that attendance on the day on which they attend and the case is adjourned.

635. Only actual travelling expenses are to be paid to complainants and witnesses, and the scales laid down in paragraph 632 are not rates of travelling allowance, but the maximum limits, for each class, up to which actual travelling expenses can be paid under the rules.

Payments of travelling allowances at the rates mentioned in paragraph 632, or at any other rate, where no actual travelling expenses have been incurred, is not in accordance with the rules. Strict adherence to the rules is essential, and such payments should not be made under any circumstances.

636. It is left to the discretion of the Courts to pay the expenses of such witnesses for the Courts to satisfy themselves that the expenses are paid of all witnesses for the defence who are properly entitled to them, that is, of all witnesses, whatever may be the nature of their evidence, who attended Court on subpoena in good faith and without collusion with the accused.

637. The Courts should not pay the expenses of witnesses who give evidence that appears to be wilfully false or who have been brought to Court with their own connivance, not because they know anything about the case, but because their presence there is desired by the accused or themselves.

638. When a Magistrate has granted permission, under sub-section (2) of section 345, Code of Criminal Procedure, to compound a case on the condition that the complainant or informant, or the accused, shall pay the costs of the prosecution, the following rules should be observed for ensuring compliance with the condition; (*cf.*, paragraph 480) :-

(i) If, at the time the Magistrate decides to allow composition no expenses have yet been paid to the witnesses for the prosecution, the Magistrate should order the complainant or informant to pay the necessary amount (which the Magistrate should specify) to the Bailiff, who will thereupon make the necessary entries in his Register No.II and disburse the expenses to the witnesses in the presence of the Magistrate. The Magistrate should make a note of the total amount paid in the diary of the case, and should at the same time cause a note to be made of the amount paid to each witness in the appropriate column of Criminal Register III. Until the amount has been so recovered and paid out to the witnesses, the order allowing composition should not be passed.

It will not be necessary to recover the expenses of witnesses in the above manner if the witnesses themselves agree to have their expenses settled by the complainant or informant out of the Court, but if the witnesses so agree the Magistrate should note the fact of such agreement in the diary of the case.

(ii) Where witnesses' expenses have already been paid by Government, the Magistrate should order the complainant or informant to pay the amount so paid by Government to the Bailiff, who will enter the amount in his Register I and pay it into the Treasury by chalan headed "Refund to Government of witness fees after composition." The Magistrate should then with his own hand certify in the diary of the case that he has inspected the chalan showing the refund of witness-fees to the Treasury and should himself enter its number and date in the diary. He should also cause a note in red ink to be made against each entry in Criminal Register III of the payment of expenses of witnesses in the case as follows: "Refunded by Chalan No.....dated.....". Only when the above procedure has been fully carried out, should the order allowing composition be passed.

(iii) Where at the time of composition the expenses of some witnesses have already been paid by Government and other witnesses have not yet been paid their expenses, the Magistrate should comply with sub-paragraph (i) in respect of the expenses which have not yet been disbursed, and with sub-paragraph (ii) in respect of the expenses which have already been disbursed.

(iv) The above instructions apply *mutatis mutandis* if the accused is ordered to pay the costs of the prosecution as a condition of allowing composition.

639. Each Court should be provided with funds, by permanent advance or otherwise, for prompt payment of witnesses whose expenses are borne by the State.

CHAPTER XXII.

HABITUAL OFFENDERS-PREVIOUS CONVICTIONS AND ACQUITTALS.

Habitual and Previously Convicted Offenders.

640. (1) Accused persons who have been previously convicted of offences punishable under Chapter XII or Chapter XVII of the Penal Code with imprisonment for three years or more, and who are again prosecuted for any such offence, should not be tried by a Magistrate of the second or third class unless he is of the opinion that he can award an adequate sentence. On conviction the proceedings should be submitted to the Subdivisional Magistrate for perusal.

348. (2) Magistrates should remember that these cases must under section 348 be either committed to the Court of Session or transferred to a Special Power Magistrate for disposal, or tried through out by the Magistrate himself. They cannot be referred for higher punishment under section 349.

641. In cases sent up for inquiry or trial by the police (except in cases under sections 269, 277, 280, 283, 285, 286, 289, 291 to 294, Penal Code, section 34, Act VI of 1945 and any Municipal or Local law) the police will send up a descriptive-roll of the accused in a form prescribed by the Inspector-General of Police. When an accused person who has been previously convicted is sent up for trial for an offence under the Gambling or the Excise Act a note showing that he has been previously convicted will be made in red ink against his name on the Report or Charge Sheet, as the case may be, and copy of Form Criminal 34 · will be attached to the Bail Bond by the Police 65 A officer sending up the case. If no previous conviction is known or suspected against the accused, this will be on white paper*. If a previous conviction is known or suspected, the form will be on yellow paper †, and will give the necessary particulars of previous convictions so far as known to the police including convictions of offences other than those punishable under Chapters XII and XVII of the Penal Code.

642. In police cases the Court should ascertain, by reference to the police form referred to in the last paragraph, whether any previous convictions are recorded against the accused rendering him, if convicted of the charge on which he has been sent up for trial, liable to enhanced punishment under section 75 of the Penal Code.

* Form No. Crime 20
Police 43

† Form No. Crime 21
Police 44

The judgment should show whether all or any of the previous convictions recorded by the police have been judicially proved at the trial of the accused ; and in case of conviction a certificate in accordance with the decision in the judgment on this point, signed by the Judge or Magistrate himself, should be endorsed on the descriptive-roll in Form No. ~~Crime 21~~ ^{Police 44}, which must accompany the warrant of imprisonment.

643. When an accused is sentenced to imprisonment for a period exceeding a month and no descriptive-roll has been sent up by the police, a descriptive-roll in Criminal Form 99 (white paper) where there are no previous convictions or Form 100 (unbleached paper) where previous convictions have been judicially proved at the trial of the accused, shall be prepared by the Court Police Officer, or, where there is no Court Police Officer, by the Head Clerk of the Court, and shall be attached to the warrant of imprisonment. The roll in Criminal Form 100 shall be signed by the Judge or Magistrate himself.

644. Under the provisions of section 221 (7) of the the Code of Criminal Procedure, in every case in which there are *prima facie* grounds for believing the accused to have been previously convicted of an offence, by reason of which previous conviction he is liable to enhanced punishment or punishment of a different kind under the provisions of section 75 of the Penal Code or of any other law, he must be charged with the previous conviction. Form Criminal 82 should be used for this purpose. This rule applies in all cases to which section 75 of the Penal Code or any provision of law allowing enhanced punishment for a second or subsequent offence is applicable even if the Court does not propose to pass a sentence heavier than the maximum sentence allowed by the substantive section under which the accused is charged.

The accused should be required to plead to the charge of the previous conviction and if he does not admit it the charge should be tried at the conclusion of the trial for the substantive offence. The charge must be proved in the manner laid down in section 511 of the Code of Criminal Procedure, and the Court should record a finding in the judgment as to whether the accused has been so previously convicted or not.

The charge of previous conviction, if omitted at the time of framing the charge for the substantive offence, may be added at any time before sentence is passed.

645. In many cases in which the accused has been previously convicted of a similar offence or of some other offence indicating moral turpitude, but to which no special provision of law allowing enhanced punishment in the case of a second or subsequent conviction applies, it is nevertheless expedient to pass a more severe sentence than would be passed on a first offender in a similar case. In such cases the record must show clearly that the previous convictions have been either admitted or proved.

When the trial is concluded, but before sentence is passed, the Court should proceed to try the previous convictions. Form Criminal 83 should be used for this purpose.

Without *prima facie* grounds for believing an accused to have been previously convicted he should not be asked whether he has been previously convicted.

646. A conditionally released prisoner can violate the conditions of his release in three ways, namely (a) breaking an ordinary condition of his release, *e.g.*, failing to report at a police station at the time specified in the order of conditional release, (b) committing a new offence, and (c) absconding.

In case (a) the Government can take action under section 401 of the Code of Criminal Procedure, and no prosecution under section 227, Penal Code, need be launched.

In case (b) there need not be any prosecution under section 227, Penal Code. The proper course in such a case is for the Court to try him for the offence and record a finding thereon. If the finding is one of conviction the proceedings should be forwarded to Government in the Home Department before sentence is passed in order that steps may be taken to revive the original sentence. When the original sentence has been revived the convicting Court under the provisions of section 397, Code of Criminal Procedure, may proceed to pass sentence for the new offence, and may at its option direct the sentence which it then pronounces to run consecutively or concurrently with the revived sentence.

If sentence for the new offence is wrongly pronounced before the old sentence has been revived the effect is that the revived sentence and the fresh sentence must, of necessity, run concurrently.

Case (c) is on a different footing. The second part of section 227, Penal Code, provides for a punishment to the maximum extent of one year's rigorous imprisonment, *in addition to the punishment prescribed by the first part of the section*, on conviction for the offence of violating a condition of a remission of punishment in a particular way, *viz.*, by absconding. In such a case the Government will presumably refrain from taking action under section 401 (3), Code of Criminal Procedure, and the Court trying the absconder should not take steps to have the original sentence revived by the Government, because it has adequate power to deal with the accused under section 227, Penal Code.

When a Borstal or Senior Training School lad commits an offence when on licence under section 33 of the Prevention of Crime (Young Offenders) Act, sentence should be passed in the case without referring the matter to Government but a copy of the judgment should be submitted to the Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs.

Mode of Proving Previous Conviction or Acquittal.

511.

647. A previous conviction or acquittal may be proved -

- (a) by an extract duly certified to be a copy of the sentence or order ; or in the case of a conviction either,
- (b) by certificate signed by the Superintendent of the Jail in which the sentence was executed (Form No. Police
31)or
- (c) by the production of the warrant under which the punishment was suffered :

together with, in each of these cases, evidence of the identity of the accused with the person convicted or acquitted. The documents and any evidence taken will be filed immediately after the proceeding trying the previous conviction (Form Criminal 83).

The common mistake of supposing that a certificate in Form No. ^{Crime 21}_{Police 44} fulfils the requirements of section 511 should be avoided.

NOTE. - A certified extract from Criminal Register 1 is admissible under section 65 (c) of the Evidence Act as secondary evidence of a previous conviction only when the original record of the trial has been destroyed or lost.*

648. Proof of the identity of the **accused** with the person named in the certificate or extract is **necessary** unless the previous conviction is admitted.

649. The accused should not be asked in his evidence or examination concerning previous conviction of which there is no evidence. Without proof of the authorized kind of a previous conviction the mere admission of an accused person does not justify the use of the conviction to affect the punishment to be inflicted.

650. The attention of all Magistrates is particularly directed to the law regarding Finger Print Impressions as expounded in *Hulost v. King*

Emperor (4 L.B.R., 125) the headnote of which is printed below :-

"The accused was charged with theft after three previous convictions under Chapter XVII of the Penal Code. To prove these convictions which the accused denied, certain 'Finger Impression Slips' were produced, together with statement signed by the officer in charge of the Finger-print Bureau to the effect that the impressions appearing thereon were those of the person against whom the specified convictions had been had. An officer of the Finger-print Bureau took impressions of the accused's fingers in Court and identified him as the person whose finger-prints appeared on the 'Finger Impression Slips.'

Held, - that the previous convictions of the accused stated on the slips were not proved merely by the production of such slips.'

* 43 Calcutta 973, 983.

651. (1) A Court requiring the services of a Finger-print Expert should make out a summons to "The Finger-print Expert" (not to any particular officer by name), which should be addressed through the District Superintendent of Police to the Assistant Deputy Inspector-General of Police (Crime). Inspectors and Sub-Inspectors of Police cannot ordinarily be regarded as experts.

No person other than an expert who holds a certificate granted to him by the Assistant Deputy Inspector-General of Police (Crime), to the effect that he is competent to give an opinion on finger impressions, should be allowed to give an expert opinion on finger-prints.

(2) When a second opinion on a disputed finger-print is necessary, the case should be referred to an expert from another Finger-print Bureau.

(3) In Criminal Cases, Fees, Travelling and Subsistence Allowances of the Expert are not payable by the Court. (*cf.* paragraph 62.)

Summoning of Jailors.

652. Great inconvenience is frequently caused by the summoning of jailors or assistant jailors to attend Court for the purpose of proving the previous convictions of accused persons. The grounds of complaint are -

(i) that members of the jail staff are frequently summoned and kept waiting several days before they are examined, particularly in Sessions cases, and

(ii) that members of the jail staff are frequently summoned though they cannot identify the prisoner.

All Magistrates must exercise careful discretion in the matter of summoning members of the jail staff, and before a jailor or assistant jailor is summoned the Superintendent of Jail should be asked whether or not any member of the staff can identify the accused, and arrangements should be made to have such a person sent if he is likely to be required.

Sessions Judges should also make arrangements that, if a Sessions case is postponed, intimation of that fact should, if possible, be sent (by telegram if necessary) to the jail concerned.

CHAPTER XXIII.

JUDGMENTS-PUNISHMENTS-SENTENCES-CLASSIFICATION
OF PRISONERS.**Judgments.**

366

653. Judgment must be pronounced in open Court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader. Every Sessions Judge or Magistrate, when passing a sentence which includes a fine, shall, at the time of delivery of judgment, draw the attention of the accused to the notice prescribed by paragraph 1059, Courts Manual, which is exhibited outside all Courts indicate the whereabouts of the Bailiff's office and mention the Bailiff's name. A note that this has been done should be made in the diary of the record.

Delivery of Judgment.

367(1).

654. A judgment must be written in the language of the Court. It must be dated and signed in open Court at the time of pronouncing it. It may be dictated. If dictated, or written with a typewriter, every page of the judgment must be signed by the Magistrate or Judge.

Contents of Judgments.

A judgment, once signed, cannot be altered or reviewed except to correct a clerical error.

369

655. In cases in which two or more accused are tried together, and in which the charges against the various accused rest on evidence not entirely the same, the judgment should contain : -

Judgment in joint trials.

(i) A brief but adequate statement of the case, with such general discussion of the prosecution evidence as may be called for.

(ii) A similar statement and discussion of the defence case in so far it as is common to all or most of the accused.

(iii) A separate statement and discussion of the evidence against and for each accused, with definite findings thereon. When the evidence against two or more accused is the same, such accused might be dealt with as a group instead of singly, the defence evidence for each being treated separately so far as may be necessary. When the charges against the accused vary the charge against each should be stated in this part of the judgment.

(iv) The sentence or order passed in regard to each accused.

Copies of Judgments or Intimation of Result of Trial in certain cases.

656. Whenever a charge of any offence committed by a Result Trial of Union of Military Policeman. **Union Military policeman** is enquired into or tried by a Criminal Court, the Court shall inform the Battalion Commandant or Adjutant of the result of the enquiry or trial.

Whenever a Union Military Policeman is an appellant or respondent in a criminal appeal, the Appellate Court shall inform the Battalion Commandant or Adjutant of the result of the appeal.

A copy of the judgment need not be furnished unless specially applied for; if so applied for, it shall be furnished free of charge.

657. Whenever a Criminal Court sentences a Conviction of Reservist. **reservist of the Burma Army** to transportation or imprisonment for any term exceeding three months, intimation of the sentence shall be sent by the Court to the Adjutant-General.

658. (1) Whenever a Conviction or Acquittal of Government Servant. **Government official** is judicially **convicted** of any offence, a copy of the judgment must be sent to the Head of the Department in which he is employed. The copy shall be supplied free of charge.

(2) Whenever a Government pensioner is judicially convicted of any offence a copy of the judgment must be sent to the Deputy commissioner of the District in which he is

convicted for the purpose of action under Article 351 of the Civil Service Regulations. The copy shall be supplied free of charge.

(3) Whenever a Government official is acquitted or discharged by a Criminal Court, a copy of the judgment or order shall be supplied free of charge, on the application of the Head of the Department. District Magistrates are requested to make suitable arrangements for the observance of this order by subordinate Courts.

659. The Secretary to the Government of the Union of Burma, Ministry of Judicial Affairs, shall be furnished with detailed particulars of all cases in which any certified officer of the Mercantile Marine is convicted of any serious offence. These particulars should be supplied as soon as possible, after conviction, and should be accompanied in each instance by two copies of the judgment of the convicting Court.

660. (1) Magistrates are requested to furnish to Divisional Forest Officers concerned a return in Form ^{Forrest} M. 24 of all forest cases decided by them whether prosecuted by a Forest Officer or not.

(2) The statement should be forwarded as soon as the case is decided, and any correspondence regarding it should be addressed by the Forest Officer to the Magistrate through the District Magistrate, and should be replied to by the same channel.

661. 'As regards copies of judgments in Sessions Trials and appeals and references therefrom, see paragraphs 589 and 590.

661 A. In the case of persons who have been convicted and sentenced to three years' imprisonment or more a copy of the judgment of the Appellate Court, if there is any appeal, shall be supplied free of charge on application by the Inspector-General of Prisons for the purpose of making necessary entries in the history sheet of the prisoners concerned.

Punishments.

(1) *imprisonment.*

662. In all Acts, Ordinances and Regulations,* unless the contrary is specified, "imprisonment" means either rigorous or simple imprisonment.

663. Imprisonment for a fraction of a day should not be awarded unless it is the only period that can legally be imposed. There is, however, no objection to sentence of imprisonment until the rising of the Court, where only a nominal sentence is called for.

664. While it is not desired to infringe in any way upon the discretionary powers possessed by Magistrates in sentencing offenders, it is necessary to emphasize the evils arising from sentencing offenders to short terms of imprisonment of three months or less.

Particularly in the cases of the labouring classes, the deterrent effect of such sentences is small, as vaccination, inoculation, etc., take up three weeks and the convict has then only short time to serve and cannot be put to any work demanding continuity of effort. As a rule he is employed in menial tasks connected with the domestic economy of the Jail and generally has an easy time. On the other hand, the moral effect of prison life is generally bad, while the associations are degrading, and the loss of character and self-respect involved in even the shortest term of imprisonment often tends to create a criminal. It is recognized that in some case no other form of punishment than a short term of imprisonment can be imposed, and a short sentence of imprisonment should not be avoided by passing a sentence for a longer term than the circumstances of the case really require. But in every case the Magistrate, before passing a sentence of imprisonment for a term of three months or less, should first consider whether some other order, such as the imposing of a fine or a sentence of whipping, release on probation under section 562, Code of Criminal Procedure, or the granting of time under section 388 in which to realize the amount of fine imposed, may not suitably be

* General Clauses Act, section 2.

passed. A sentence of a short term of imprisonment should not be passed until all other possible alternatives have been considered. Second and third class Magistrates should freely make use of the provisions of section 349, Code of Criminal Procedure, by forwarding the accused to the District or Subdivisional Magistrate to receive a punishment different in kind from or more severe than which can be imposed by them.

665. Sentences of a few days' imprisonment impose considerable work upon the staff of the jails, and considerable expense upon the State, and should be avoided whenever possible. When a prisoner is received in the jail there are many formalities to be complied with and forms to be filled up, and when he is released he must be provided, with substance allowance for the day on which he is released and with a free passage to his home. Under the Jail Rules as they stand, when a sentence expires on a Sunday the prisoner is to be released on the preceding Saturday, and it frequently happens that a prisoner is received in the jail on a Saturday only for the purpose of being immediately released.

Accordingly where it is necessary to pass a short sentence of imprisonment as a deterrent for a minor offence, or in default of payment of a small fine, the period of the sentence should however trivial the offence or however small the fine, not be one of less than five days (*cf.* paragraph 683 *infra*).

666. It is common practice for the Courts to pass a
 Simple Imprisonment. sentence of simple imprisonment, not because a minor degree of moral turpitude is involved in the crime committed, but in view of the prisoners' presumed unfitness for labour. The Courts should not take into consideration any question of the physical fitness of a convict to labour. It is for the jail authorities to ascertain what labour is appropriate to a prisoner's strength and to put him that only ; the Courts have merely to consider the amount and nature of the imprisonment appropriate to the offence, and the character and status of the offender. and they should realize that by selecting simple instead of rigorous imprisonment they make a very essential difference in the way in which a prisoner will be treated on his admission to jail.

667. Reasons for inflicting solitary confinement under section 73 and 74 of the Penal Code should always be recorded by the Court when passing sentence. The power to impose solitary confinement in England has been abolished since 1893, and as the sentence ordinarily hinders any attempt to reform the prisoner and results in deterioration rather than improvement of his mental faculties, it should never be awarded as part of a sentence in case tried summarily ; nor should it be awarded on first conviction. Sentences of solitary confinement passed for separate offences, whether in the same or more than one trial, should not in the aggregate exceed *three* months.

(2) *Transportation.*

668. (1) Sentences of transportation are not carried out in practice. Consequently Sessions Judges and Magistrates exercising Special Powers should not exercise the option which they possess under section 59 of Penal Code except in very serious cases, such as offences under sections 123 - 130 of the Code, and a sentence of transportation should not ordinarily be passed unless it IS ESSENTIAL UNDER the Code, *e.g.*, in the case of life sentences.

Penal Code,
59

(2) Under section 59 of the Penal Code, a sentence of imprisonment is NOT commuted to one of transportation. The correct procedure is to sentence the offender to transportation under the section under which the offence is punishable read with section 59 of the Penal Code.

(3) *Whipping*

669. to 681.	x	x	x	x	x	x
x x x	x	x	x	x	x	x

(4) *Fines.*

Penal Code,
63 - 70.

682. Sentences of fine should never be passed without due regard to the means of the person fined to pay the fine.

Penal Code.
8.

Excessive fines are prohibited by law and should be carefully avoided.

683. (1) The attention of all Courts is called to sections 64 to 67 inclusive of the Penal Code and also to section 33 of the Code of Criminal Procedure, relating to sentences of imprisonment in default of payment of fine.

Penal Code.
65.

(2) Under section 65, Penal Code, the term of imprisonment in default must not exceed one-fourth of the maximum term of imprisonment fixed for the offence, if the offence is punishable **with imprisonment as well as fine**.

This rule applies whether imprisonment is actually awarded or not. It applies to cases where imprisonment or fine, but not both, can be awarded, no less than to cases in which both imprisonment and fine can be imposed.

(3) Subject to the rule in sub-paragraph (2), in cases punishable with imprisonment as well as fine where a sentence of fine only is passed, the Magistrate may award, in default of payment of fine, imprisonment up to the limit of his ordinary powers, *e.g.*, in a case of simple theft under section 379, Penal Code, if fine only is imposed a Magistrate of the first class may award, in default of payment, imprisonment for nine months, a Magistrate of the second class imprisonment for six months and a Magistrate of the third class imprisonment for one month.

33 (1) (a).

33 (1) (b). (4) Where a Magistrate sentences to imprisonment and fine, the period of imprisonment awarded in default of payment of the fine cannot exceed one-fourth of the period which the Magistrate has power to impose substantively. Thus in the case in sub-paragraph (3) a Magistrate of the first class cannot award more than six months, a Magistrate of the second class more than one month and a half, and a Magistrate of the third class more than one week.

Penal Code.
67. (5) If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of fine -

- (a) must be simple; and
- (b) the term for which the Court directs the offender to be imprisoned in default of payment of fine must not exceed two months when the amount of the fine does not exceed K 50, four months when the amount does not exceed K 100, and six months in any other case.

33 (1) (a). In this case a Magistrate of the third class cannot award imprisonment for more than one month in default of payment of a fine. (See also paragraph 665 *supra*.)

Penal Code.
66. 684. Imprisonment awarded in default of payment of a fine may be of any kind which may be imposed for the offence.

General
Clauses Act.
25. 685. The rules contained in paragraphs 683 and 684 apply to all fines imposed under any Act, Regulation, Rule or Bye-law, unless there is an express provision to the contrary. Courts should be careful to see that there is no express provision excluding from the operation of this rule, *e.g.*, in section 47 of the Police Act, there is an express provision overriding it.

Application of rule regarding imprisonment in default of fine.

Sentences.

686. When a person is convicted of a single offence, the Court, subject to the provisions of section 562, must pass some sentence upon him, even though it be a nominal one.

35. 687. Separate sentences of transportation or imprisonment passed at one trial run consecutively, unless the Court, as it may do, direct them to run concurrently.

397. 688. Separate sentences passed at separate trials run consecutively unless the Court which passes the subsequent sentence directs that such subsequent sentence shall run concurrently with the sentence previously passed on the accused.

689. The President of the Union has drawn attention to
Sentences in Coinage Cases. the inadequacy of the sentences which in some instances are passed by the Courts for offences relating to the coinage. Magistrates are therefore reminded of the necessity for the imposition of suitable sentences in such cases. Sessions Judges and District Magistrates are also requested to scrutinize carefully all sentences passed in such cases. In any instance in which the sentence of the Court is obviously insufficient, application should be made to the High Court to revise and enhance the sentence.

690. (1) The attention of Magistrates is called to the
Sentences in Hurt Cases. advisability of passing really deterrent sentences in cases in which hurt is caused by a knife or other deadly weapon. The use of knives on the slightest provocation, and often without any provocation at all, is far too frequent in Burma. The most likely method of suppressing this dangerous practice is to make the punishment severe and certain.

(2) Where an accused is sent up for trial under section 326, Penal Code, for causing grievous hurt with a deadly weapon, a reference should always be made to the District Magistrate, in order that he may, if he thinks fit, try the case in exercise of his special powers or transfer it to a Sepcial Power Magistrate for trial. Many cases of this kind are hardly distinguishable from attempts to murder, punishable under section 307 of the Penal Code. Magistrates, other than the District Magistrate or a Magistrate specially empowered under section 30, can rarely impose a sufficiently severe sentence in these cases.

691. In some districts theft of valuable plough or car-cattle from cultivators' houses or grazing grounds may be common, and the prevalence of the crime and the fact that it

results in cultivators losing their means of cultivating their land and so their livelihood may be reasons for passing deterrent sentences. Even in such cases, however, other circumstances such as the age and previous history of the offender must be taken into consideration in assessing the sentence; and such cases must be clearly distinguished from cases of casual theft of animals of small value and utility, usually left to graze in the jungle, in which no reasons for passing deterrent sentences normally exist. The attention of Magistrate is drawn to the ruling in *Po Nyein v. K E.*, 9 L.B.R. 167, in which the principles to be followed in assessing punishment in cases of theft of boats and cattle are laid down.

Attention is also drawn to the remarks in that judgment on the question of enhancement of sentence owing to previous conviction.

692. (1) Attention is invited to the observations in the judgment in the case of *King-Emperor v. Nga Ba Shein* (I.L.R. 6 Rang. 391) concerning the reception of statements regarding the character of an accused person

in order to assist the Court in the assessment of the appropriate punishment to be inflicted when the accused has been found guilty. These observations are equally applicable to the question of the classification of a convicted person as 'habitual' or 'non-habitual'.

(2) In all cases in which a person is sent up for trial on a charge of any of the offences mentioned in the schedule below a brief history of the accused will in future be compiled by the investigating officer, or some officer deputed by him, from his own knowledge and by enquiry from headmen and others who are likely to be acquainted with the past history of the accused. This history will contain reference to facts which tend to show that the accused is of criminal habit.

It will state the offences of which the accused has been convicted or suspected, with details showing whether they were serious or petty, and giving the dates of commission and grounds of suspicion ; whether the accused associates with criminals and/or has been led astray by them ; whether the particular form of crime is prevalent in the locality. It will also state any facts or circumstances in favour of the accused, such as previous good character, the state of his health, bodily and mental. This history will be in the possession of the Public Prosecutor or Court Prosecuting Officer.

(3) At the conclusion of the trial, if the case ends in the conviction of the accused, after the completion of the Judgment and before delivery of it or pronouncement of sentence the Sessions Judge or Magistrate should ask the Public Prosecutor or Court Prosecuting Officer whether there is anything in the history of the accused of sufficient importance to be brought to the notice of the Court to assist in the assessment of punishment and/or classification of the accused as 'habitual' or 'non-habitual'. If the reply is in the affirmative, the police officer who prepared the history must be examined on oath or affirmation, in the presence of the accused, as to the matters mentioned therein. A summary of his statement should be recorded. The Sessions Judge or Magistrate may himself call for and persue the history, but the matters mentioned in the history may not be taken into consideration unless and until they have been deposed to on oath, in the presence of the accused, by the officer who prepared it. This officer must state which matters he knows of his own knowledge and which he has learnt by enquiry. If the accused does not challenge the accuracy of the history the Court is entitled to take it into consideration on the question of sentence and/or classification, notwithstanding that some parts of it may be hearsay. If the accused does deny any fact stated, that fact must be left out of account, or, if the Sessions Judge or Magistrate thinks the fact of sufficient importance to justify this course, an adjournment must be given to enable the prosecution to call witnesses and prove it by legal evidence.

(4) Depositions of witnesses called to give evidence as to the history of the accused should be filed in the record of the case immediately after the oral or, if any, the documentary evidence for the defence.

(5) In some cases the only matter of importance mentioned in the history may be a list of previous convictions of the accused. In such a case the Judge or Magistrate, instead of examining the officer who compiled the history, should call for and peruse the records of the cases in which the accused was previously convicted in order to see the nature of the offences committed.

(6) Notwithstanding the above instructions, in every case in which it is alleged that a convicted accused has a previous conviction or convictions, such previous convictions must always be judicially proved in the ordinary way (*vide* paragraphs 647 to 652 *spra*).

Schedule.

1. Offences under the -
Penal Code. - Sections 182, 211, 215 (cattle), 216A, 231 - 240, 242 - 253, 255 - 263, 311, 328, 363 - 369, 379-382, 384, 386-389, 392-402, 403(cattle), 404, 406-409, 411-414, 418-420, 429-433, 435-440, 440-450, 454-462, 489A-489D.
Arms Act. - Sections 19,20.
Rangoon Town Police Act. - Section 31.
Burma Gambling Act. - Section 12.
2. Attempts to commit any of the above offences.
3. Offences under Chapter XVI of the Penal Code, where there is reason to believe that the accused habitually commits offences against the person.

693. The reasons for passing sentences of exceptional severity must be stated on the record. Local circumstances, especially in the case of such Acts as the Opium and Excise Acts, may form a good reason but should be explained.

Reasons for severe sentences

694. In cases of timber theft, where it is obvious that the infliction of a small fine will be more than balanced by the profits derived from the sale of the stolen timber, and particularly in districts where timber theft is a common offence, Magistrates are instructed to see that the punishment which they impose in respect of such offences is of a sufficiently deterrent nature.

Sentences in Timber
Theft cases.

695. When a recommendation for clemency is made in the course of a judgment or appellate order in a criminal case, such recommendation should be brought directly to the notice of the President of the Union through the High Court.

Recommendations
for Clemency.

Release of First Offenders.

696. Subdivisional Magistrates, even though Magistrates of the second class, have jurisdiction under section 562 without being specially empowered. Other second class Magistrate, unless specially empowered by the President of the Union and Magistrates of the third class cannot act under sub-section (1) of section 562. When a second class Magistrate, not specially empowered, or a third class Magistrate is of opinion that the powers conferred by section 562, sub-section (1), should be exercised, he must proceed under the proviso to sub-section (1) and submit the proceedings to the Subdivisional Magistrate or a Magistrate of the first class.

Magistrates em-
powered under Section
562.

697. (a) In the case of Males under 21 years of age and females of any age convicted of any offence except offences punishable with death or transportation for life and in the case of males not under 21 years of age convicted of an offence punishable with imprisonment for not more than seven years, the accused may, in certain circumstances, be released on probation of good conduct.

Release on Pro-
bation.

(b) The application of the section is not confined to youthful offenders convicted of trivial offences in extenuating circumstances. The most important points for consideration are the fact that the accused is a first offender and the antecedents of the accused.

The following general principles are laid down for the guidance of Magistrates in the application of section 562 : -

(1) Where an offender has hitherto borne a good character (a matter to be enquired into) and the offence is trivial and not marked by any features indicating a criminal mind, the normal procedure should be to release such an offender on probation under section 562, and if in such case Magistrate does not so release the offender he should give his reasons fully for not doing so.

(2) Where such circumstances as aforesaid (*i.e.*, previous good character, etc.), do not exist the Magistrate, while still at liberty to apply section 562, must do so only after careful consideration of the facts and after careful scrutiny of the provisions of the section, and in such cases his reasons for releasing the offender on probation must be fully stated.

698. The accused may be required to enter into a bond for any period not exceeding three years.
 Period of Probation; Sureties. If sureties are demanded, care should be taken to see that the persons of sufficient means and standing and are also in position to exercise continuously a good influence over the accused.

Execution of Sentences.

562 (1A).

699. Sub-section (1A) of section 562 provides, in respect of certain offences, for the release of an offender against whom no previous conviction is proved after due admonition.

Release with Admonition.

It should be noted that it is only in case of the offences specified in the sub-section that orders can be passed under it. The most important points to consider, before applying this sub-section, are the youth or immature mental development of the accused, his antecedents and the trivial nature of the offence. All Magistrates can act under sub-section (1A) of section 562 of the Code of Criminal Procedure and release first offenders after due admonition.

383.

700. The attention of Magistrates is invited to section 383 of the Code of Criminal Procedure, which requires the Court sentencing an accused person to imprisonment to send him

forthwith, with the commitment warrant, to the jail in which he is to be confined. The transfer under escort of prisoners sentenced to confinement for periods not exceeding a few days involves unnecessary expense and inconvenience, and Magistrates at stations where there are no jails should, for this reason, avoid passing short sentences of imprisonment where there is suitable alternative. When a short sentence is unavoidable, as is sometimes the case, particularly when imprisonment is imposed in default of the payment of a fine, the prisoner must be sent to jail without avoidable delay except when it is impossible for him to reach the jail in time to undergo any part of his sentence therein, in which case he must of necessity be detained in police custody.

383. 366 (1)
(a).

701. Cases have occasionally come to notice in which a person sentenced to imprisonment has been kept in police custody for a considerable period to stand his trial in another case at the same place, or because his presence was required in connection with a police investigation in another case. Such procedure besides involving a contravention of section 383 of the Code of Criminal Procedure, may have very serious result of depriving the prisoner of facilities for appealing against his sentence in the first case until the period of limitation has expired. In the case of a prisoner who is required to stand his trial in a second case at the place where the jail in which he is confined is situated, the proper course would be to send a production order (Form Criminal 54) to the officer in charge of the jail under section 37 of the Prisoners Act. This section, however, does not seem to contemplate the production of a prisoner for the purpose of a police investigation, and in the case of a Court at a place where there is no jail, the procedure above referred to may involve much inconvenience. At a place where there is no jail, when a trial has concluded and the Magistrate has decided to convict and to pass a sentence of imprisonment or transportation, if the accused is required at the same place to stand his trial in another case or for a police investigation, delivery of judgment in the first case should be postponed until the completion of the trial in the latter case, unless such course is likely to involve prolonged delay in the disposal of the first case.

702. Warrants of imprisonment directed to Superintendents of Jails and Warrants directed to the keeper of a Subdivisional or Township Lock-up should be in Burmese. It is illegal to sentence any person to confinement in a police Lock-up - 7. L.B.R. 62.

703. In every warrant, the kind of imprisonment, whether simple or rigorous, should be specified in full. The use of the letters S and R to indicate this is prohibited.

704. On every warrant of imprisonment or release from imprisonment issued by a Criminal Court, the number of the case in which the warrant is issued should be entered.

705. Where a sentence of imprisonment is passed in a summary trial, the Court shall note at the top of the committal warrant the words "Criminal Summary Trial No. _____" and when a case is not a regular criminal case it should be entered in warrant as "Miscellaneous."

565. 706. An order passed under section 565 shall be entered on the warrant. See paragraph 392.

707. When a sentence of imprisonment is passed upon a person already under sentence of imprisonment, the new period of imprisonment commences at the expiration of the sentence such person is undergoing unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Hence every subsequent warrant issued relating to the same accused should be clearly headed "*To take effect on expiry of (or to run concurrently with) sentence in previous case No. _____*".

708.[†] When an accused person is sentenced in the original trial to a term of imprisonment but a re-trial is ordered on appeal or revision by a superior Court, and in the re-trial the accused is again sentenced to a term of imprisonment, the subsequent sentence of imprisonment takes effect from the date of the judgment in the re-trial and not from the date of the original sentence, and the period of imprisonment already undergone after sentence passed in the original case and before the order for re-trial was passed cannot count towards the sentence passed in the re-trial.

[†] See B.L.R.(1967) P 348 and Court Instruction No.6.

But in passing sentence in the re-trial the period which the accused has already spent in jail or under custody may be taken into consideration.

709. In every case in which two or more persons are jointly charged and convicted of an offence, a separate warrant or order must be issued for the commitment to prison of each sentence passed upon him.

Separate Warrant
for each accused.

710. When a Superior Court modifies a sentence passed by an Original Court, the sentence of the Superior Court shall unless specially otherwise directed in the warrant, count from the first day of imprisonment under the original sentence.

Modified Sentence
of Imprisonment.

711. When a prisoner has been committed to jail to undergo two separate sentences of imprisonment of transportation, one of which is to take effect from the expiry of the other (whether the sentences have been passed on the same or on different days), if the first sentence is set aside on appeal or revision, the second sentence will take effect from the date on which it (the second sentence) was passed.

Effect of reversal of
first of two sentences.

712. Every warrant must be signed by the Judge or Magistrate who passed the sentence. The practice of allowing a subordinate to sign warrants "for" a superior is strictly prohibited. Judges and Magistrates should record the terms of sentences on the Committal warrants in their own handwriting both in figures and in words.

Warrants to be
signed by Judge or
Magistrate.

713. It is the duty of the Judge or Magistrate who signs
 Warrant of Release. a warrant of release to see that the entries
 therein correspond exactly with those in
 the original warrant of imprisonment on the record, so that no
 room for doubt may be given as to the identity of the person
 whose release is intended. Among these entries is that of the
 number of the case.

714. The attention of Sessions Judges is invited to para-
 Remissions. graph 832 *et seq.* of the Jail Manual
 which prescribe rules for the shortening
 of sentences by the grant of remissions.

The note to paragraphs 852 and 853, Jail Manual, makes
 it important that the classification of convicts under clause (b),
 (c) or (d) of paragraph 833 should be correctly made, and the
 following instructions are accordingly issued :-

(1) In every case of life sentence the convicting Court
 shall endorse on the warrant of commitment, for the information
 of the jail authorities, the class, whether (1), (2) or (3), to which
 the prisoner belongs for the purpose of the remission rules.

(2) If in any case the classification is not made, the jail
 authorities should refer the warrant to the Court, which will
 then have the proper entry made on it.

(3) If there is any doubt as to the entry to be made, the
 Court should decide the question by a reference to the record of
 the case or by further inquiry, if necessary.

715. If a sentence of death is confirmed by the High
 Capital sentences. Court the warrant issued by the Sessions
 Date of Execution. Judge to the Jailor shall specify that the
 execution is not to be carried out until a
 day therein named that he shall be at least 21 days from the
 date of receipt of the order of confirmation and may be as
 many more up to 28 days as the Sessions Judge, having regard
 to the situation of the Jail in which condemned prisoner is
 confined, may think fit. In the case of prisoners confined at
 Akyab, Kyaukpyu, Sandoway, Tavoy and Mergui, the period
 shall be fixed at not less than 28 days and not more than 35
 days. A copy of his own judgment together with the High
 Court's order of confirmation shall be sent to the Sessions Judge
 so that he can make out on the warrant completely.

This is necessary because the proceedings are submitted to the President of the Union as soon as the order of confirmation is passed for reference in connection with the petition for clemency. He should return this copy when it is no longer required.

NOTE. - That the fixation of the date of sentence of death is subject to the power of Government to suspend or commute the sentence under sections 401 and 402 of the Code of Criminal Procedure.

716. (1) Along with every warrant, whether of commitment or release or communicating an amendment of sentence or the payment of a fine or portion thereof addressed to the Jailor of a prison, a duplicate copy thereof shall be sent, which shall forthwith be returned to the Court which issued it by the said Jailor with a duly dated endorsement under his signature to show that he has received the original. In any case in which undue delay occurs in the receipt by the Court of the duplicate copy a letter shall be sent to the Superintendent to enquire the reason.

(2) The Jail to which the accused has been sent should be noted in the Case Diary when the warrant is signed. If this is not done, and the record is called in appeal or revision before the duplicate warrant is returned, it may be difficult for the superior Court to discover the whereabouts of the accused.

(3) On the return of the **duplicate warrant** duly signed, by the Jailor it shall be filed in the trial record.

717. The **original warrant** is sent under paragraph 573 of the Jail Manual to the District Magistrate of the District in which the Court which issued the warrant is situated. Where the record is in the record-room the warrant will be sent to the Record-keeper to be filed in the case concerned. Where it is still in the Court which issued the warrant, the later will be forwarded to that Court. Any request about intimating the death of a prisoner to his relatives will be transmitted to the Court of issue in any case.

718. to 725	x	x	x	x	x	x
x x x	x	x	x	x	x	x

726. When a fine imposed in addition to imprisonment is paid immediately, the warrant of imprisonment shall be endorsed with a note of the payment under the signature of the Magistrate issuing the warrant.

727. When a Court recovers a fine, or any portion thereof, inflicted upon a prisoner who is already in jail, or who is liable to be further detained in jail in default of payment of that fine, the Court shall be held responsible for the immediate communication* to the Jailor of the fact of recovery.

728. The fact that the payment of a fine has been intimated to the jail authorities shall be recorded in the diary of the case under the signature of the presiding officer of the Court. And when a Court has intimated to the Superintendent of the Jail the payment of a fine it shall obtain and place on the record a prompt acknowledgment of the receipt of the intimation and shall see that the warrant of imprisonment is returned at once (if there is no substantive term of imprisonment) or as soon as any substantive term of imprisonment has expired.

729. (1) In the case of fines (or other money) of which a refund has been directed in appeal or revision, the procedure prescribed in paragraphs 1047 and 1048 of Part V should be followed when the order of the superior Court is certified to the inferior, but a notice to the person to whom the fine or other money is to be refunded should issue at once.

* The communication should be by a warrant in Form Criminal 177.

(2) It is the duty of the Original Court on receipt of the Appellate or Revisional Court's order for the refund of a fine, to notify immediately the substance of such order to the person affected thereby and, if such fine has been levied, promptly to prepare the payment order (in Treasury Form No. 48) and deliver it to the payee whether he applies for it or not. No written application for the refund of a fine ordered by the Appellate or Revisional Court is necessary from the person entitled to such refund, but if an applicant for refund should at any time present a written application it should be accepted on plain paper without any court-fee.

Directly a refund has been made, a report in Form Criminal No. 126 shall be submitted to the Appellate or Revisional Court ordering such refund.

730. (1) According to section 545 of the Code of Criminal Procedure, money realized by fines cannot be paid away as compensation in appealable case until the appeal has been decided or is barred by limitation. This provision, however, does not prevent occasional difficulties from arising in cases where no appeal lies nor one has been presented, but in which the fine is set aside on revision. Further under various special Acts Magistrates have power to give rewards to informers and others out of fines, and there is nothing to prevent Magistrates from paying these rewards at once. Moreover, it is expedient for the better protection of the revenue that rewards opium cases and the like should be promptly paid. Therefore cases must occasionally arise in which a fine is set aside upon appeal or revision, but the money realized by the fine has been paid away in whole or part to a third party.

(2) In all such cases the amount of the fine must be refunded in full to the person by whom it was paid; and the order of the superior Court ordering a refund is sufficient authority for its payment from the Treasury. It does not, however, follow that Government should bear the loss of the amount which has been paid away in compensation or rewards, and it appears that in most cases the recipients of compensation or rewards refund them when invited so to do.

It is accordingly directed that in all cases where a fine has to be refunded and part or the whole has been paid away in compensation or reward, the persons to whom the fine has been paid in whole or part shall be invited to repay the money. If they refuse, steps shall ordinarily be taken to recover the amount under section 547 of the Code of Criminal Procedure, which has been held to apply to such recoveries.

If the amount or any portion of it is irrecoverable, or if it is considered that recovery should be waived on the ground that the person who received the reward is, on the merits of the case, equitably entitled to keep it and its recovery would involve undue hardship, the Deputy Commissioner shall move the Commissioner to accord sanction to the writing off of the amount up to a limit of K 1,000 or to obtain the sanction of the President of the Union if the amount exceeds K 1,000.

(3) In Opium and Excise cases non-official persons shall not be invited or required to refund without the special sanction of Deputy Commissioner.

Recovery of Fines.

731. (1) The Law relating to the realization of fines is contained in sections 386 to 388 of the Code of Criminal Procedure, and sections 64 to 70 to the Penal Code.

(2) Action for the recovery of a fine may be taken in either or both of the following ways, namely :-

- (a) issue of distress warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;
- (b) issue a warrant to the Collector, authorizing him to realize the amount by execution according to Civil process against the moveable or immoveable property, or both, of the defaulter.

(3) Ordinarily a Distress Warrant under section 386 (1) (a) should first issue. Then, if no moveable property belonging to the offender can be discovered, or his moveable property is insufficient to pay the whole of the fine, a warrant under section 386 (1) (b) may issue to the Collector.

386 (1) (a)

732. (1) A warrant issued under section 386 (1) (a) for the levy of fine by attachment and sale of moveable property should ordinarily be directed to a police officer and the Magistrate issuing it should fix a time for the sale and for the return of the warrant. If no one claims the property distrained, the police have the power of selling it within the time specified in the warrant without any previous reference to the Magistrate. If a claimant comes forward, then the ownership of the property distrained must be determined by the Magistrate and not by the police.

(2) On opening a proceeding under section 386 one distress warrant should be issued as a matter of course and on the receipt of the report thereon the Magistrate should scrutinize it. If the report explicitly states that there is no moveable property which can be attached, the Magistrate must not continue to issue fresh distress warrants unless and until he has satisfied himself by personal enquiry or otherwise that moveable property exists which can be attached in satisfaction of the fine.

386 (1) (b)

733. When the offender possesses no moveable property, or his moveable property is insufficient to satisfy the fine, the Magistrate should make inquiries as to whether he possesses any immovable property. If he does, a warrant under section 386 (1) (b) may issue to the Collector. But such a warrant should not be issued until the Magistrate has satisfied himself that there is property capable of attachment.

Where, in the opinion of the Magistrate, it is more expedient to do so, action under section 386 (1) (b) may be taken against the offender's moveable property, in lieu of or in conjunction with the issue of a distress warrant.

388.

734. Under the provisions of section 388, where an offender has been sentenced to fine only or to fines in addition to a nominal sentence of imprisonment, a Court may order the fine to be paid at any future date within thirty days of the date of sentence, or to be paid in not more than three instalments, at intervals not more than thirty days apart.

The execution of the sentence of imprisonment in default may be suspended on the execution of a bond.

Penal Code,
70.

735. (1) When a convicted person is sent to jail for default of payment of fine, proceedings for the recovery of the fine should at once be opened, and every effort should be made to recover the fine while he is undergoing the sentence in jail. But, under

the proviso to section 386 (1), when the accused has completely served the sentence in default further steps to recover the fine cannot be taken unless for special reasons to be recorded in writing the Court considers that the offender is able to pay the whole or some part of the fine; and consequently, in the absence of such special reasons, when the whole of the sentence in default has been served steps should be taken under sub-paragraph (2) to strike off the fine as irrecoverable.

(2) When, after having taken all such steps as he considers feasible for the recovery of a fine, the Magistrate is of opinion that the fine or any part thereof, is irrecoverable, he should submit his proceedings to the District Magistrate with a recommendation that the fine, or the unrecovered portion thereof, be struck off as irrecoverable. The District Magistrate, on receipt of the proceedings, shall then pass such orders thereon as he thinks fit, either striking off the fine, or directing what further steps shall be taken by the Magistrate for its recovery.

Subordinate Magistrates are forbidden to write off fines on their own authority. No fine or any part thereof should normally be struck off as irrecoverable before the accused has undergone the substantive sentence of imprisonment (if any) passed in addition to the fine, and also the sentence of imprisonment passed in default of payment of fine.

(3) Subject to the provisions of the proviso to section 386 (1), a fine or any part thereof which remains unpaid, may be levied at any time within six years after the passing of sentence and the death of the offender does not discharge from the liability any property of which he dies possessed; *vide* section 70, Penal Code. There is no provision in the Codes which provides for the remission of irrecoverable fines, and when a District Magistrate writes off a fine as irrecoverable he is acting merely under the executive instructions contained in sub-paragraph (2).

The mere fact that the District Magistrate has written off a fine as irrecoverable is no bar to the Magistrate taking action to levy the fine within the time allowed by section 70 of the Penal Code, if it subsequently appears that the person from whom it was due has acquired the means of paying it.

547. 736. Attention is drawn to section 547 which provides for
 Recovery of money the recovery of any money payable by
 other than fines. order of a Court.

**Classification of Prisoners as " Habituals " and
 " Non-habituals." ***

737. I. -The following persons shall be liable to be classified as " habitual criminals, " namely:-

- (i) any persons convicted of an offence punishable under Chapters XII, XVII and XVIII of the Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he is by habit a robber, house-breaker, dacoit, thief or receiver of stolen property, or that he habitually commits extortion, cheating, counterfeiting coin, currency notes or stamps, or forgery ;
- (ii) any person convicted of an offence punishable under Chapter XVI, of the Penal Code, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offences against the person ;
- (iii) any person committed to or detained in prison under section 123 (read with section 110) of the Code of Criminal Procedure, or any person committed to or detained in prison under section 123 read with section 109 of the Code of Criminal Procedure, who on a previous conviction has been classified as an habitual ;
- (iv) any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits or of thieves, or a dealer in slaves or in stolen property ;

* Judicial Department Notification No. 121, dated the 4th May 1940, as amended by Notification No. 3, dated the 18th January 1950.

- (v) any person convicted by a competent Court or Tribunal acting outside the Union of Burma, of an offence which would have rendered him liable to be classified as a habitual criminal if he had been convicted in a Court established in the Union of Burma.

Explanation. - For the purposes of this definition the word "conviction" shall include an order made under section 118, read with section 110 of the Code of Criminal Procedure.

II. - The classification of a convicted person as a habitual criminal should ordinarily be made by the convicting Court, but if the convicting Court omits to do so, such classification may be made by the District Magistrate, or, in the absence of an order by the convicting Court or District Magistrate, and pending the result of a reference to the District Magistrate, by the officer in charge of the jail where such convicted person is confined :

Provided that any person classed as a habitual criminal may apply for revision of the order.

III. - The convicting Court or the District Magistrate may, for reasons to be recorded in writing, direct that any convicted person or any person committed to or detained in prison under section 123 (read with section 110) of the Code of Criminal Procedure shall not be classed as a habitual criminal and may revise such direction.

IV. - Convicting Courts or District Magistrates as the case may be may revise their own classifications and the District Magistrate may alter any classification of a person made by convicting Court or any other authority provided that the alternation is made on the basis of facts which were not before such Court or authority.

NOTE. - The expression "District Magistrate" wherever it occurs in Rules II, III and IV above means the District Magistrate of the district in which the criminal was convicted, committed or detained.

V. - Every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminals shall be kept ;

Provided that the Inspector-General of Prisons may transfer to this special jail any prisoner, not being a habitual criminal, whom, for reasons to be recorded in writing, he believes to be of so vicious or depraved a character and to exercise, or to be likely to exercise, so evil an influence on his fellow-prisoners that he ought not to be confined with other non-habitual prisoners, but a prisoner so transferred shall not otherwise be subject to the special rules affecting habitual criminals.

2. The President of the Union desires to draw special attention to Rule II above and considers it would be advantageous if the High Court would instruct Magistrates to exercise great care in classifying criminals as habituals and would bring specially to their notice the obligation ordinarily imposed on them to make the classification. In cases of doubt Subordinate Magistrates should, if possible, refer to the District Magistrate for guidance. If such reference be not possible, then Magistrates should leave the matter undecided, and omit to fill in the certificate at the foot of the warrant. The classification will then be made by the Superintendent of the Jail. In order that the control of the District Magistrate over classification by the jail authorities may be effectual, the Superintendent of the Jail should report to the District Magistrate cases in which the classification has been made by him because of the Magistrate's omission.

3. Attention is also drawn to the cases of men who, after being classed as habituals during a term of imprisonment, are after release again convicted and are calssed as non-habituals. Sometimes this occurs through the carelessness of the Magistrate, sometimes because the fact that a man had previously been classed as a habitual was not brought to the Magistrate's notice. In the opinion of the President of the Union a man who has once been classed as a habitual should in all subsequent convictions be classed as a habitual unless so long a term has elapsed since his previous conviction as may be held to have purged him of the criminal habit. When a man has wrongly been classed as a non-habitual after previous classification as a habitual, the Superintendent of the Jail should apply to the convicting Court to correct the mistake. Under the Rule IV In paragraph 1 above a convicting Court may revise its own classification and Superitendents of Jails should not fail to move Subordinate Courts to revise incorrect classifications where necessary. Any refusal or neglect to do so on the part of Subordinate Court should be brought to the notice of the District Magistrate.

4. There is also the case of a habitual prisoner who while in jail is convicted of some such offence as causing hurt and is sentenced to an additional term of imprisonment. A person convicted and sentenced under these circumstances, should the President of the Union considers, be classified as a habitual for the additional term.

5. In order to enable inspecting officers to see in what way Subordinate Courts exercise their powers of classification, an entry of the classification of any person as a habitual should be made in the remarks column of the Magistrate's "General Register of Cases brought to trial". Officers who inspect Courts or Jails should make a point of seeing that Subordinate Courts exercise a proper discretion in this matter and should notice cases of habitual carelessness or inattention to the prescribed principles.

6. Another point on which there appears to be some misapprehension is as to the nature of the proof which should be required of a previous conviction, before a prisoner is classified as habitual. The classification of prisoners is an executive and not a judicial act, and for the purposes of such classification a previous conviction need not be proved in the same way as it has to be proved for judicial purposes. It is sufficient if the Court is satisfied on such evidence as may be produced by the Police or the Superintendent of the Jail that a prisoner has actually been previously convicted.

7. Under Rule V in paragraph 1 above every habitual criminal shall as far as possible be confined in a special jail in which no prisoner other than habitual criminals shall be kept.

The object of keeping habituals apart from non-habituals is to prevent non-habituals, many of whom may be men who have committed crime in a momentary outburst of passion or yielding to temptation and who are not in any way hardened criminals, from being contaminated by association with habituals who are ordinarily by character or by habit irreclaimable criminals. Moreover prison life is purposely made harder for habituals than for non-habituals. The incorrect classification of a non-habitual as a habitual exposes the prisoner to contaminating influence which would otherwise be avoided, while the classification of habitual as a non-habitual prisoner from experiencing the full deterrent effects of prison life.

8. The general orders regarding the classification of prisoners as habituals and non-habituals must be the same for adult and adolescent prisoners, but the President of the Union considers that in the case of adolescents there is not the same reason to consider them to be recidivists merely because, for example, of one previous conviction for an offence punishable under Chapter XVII of the Penal Code. The matter is of considerable importance owing to the Borstal system which is applied to adolescent prisoners. Several cases have however been brought to the notice of the President of the Union of prisoners who have been classified as "habituals" who are not by character and habit irreclaimable criminals, and who are likely to benefit by the Borstal system.

In such cases the convicting Courts should make full use of the discretion granted to them in Rule III in paragraph 1 above.

9. With reference to this provision the President of the Union desires to impress upon District Magistrates that it is necessary to exclude from a Borstal school hardened young criminals who are likely to contaminate other criminals ; but that it is not desired to subject to contamination in other jails young criminals who are not irreclaimable, merely because of a rigid interpretation of the definition of a habitual criminal.

738. Under Rule I (i) and (ii) of the rules in paragraph 737 above a previous conviction in itself is *not* a sufficient reason for classifying a prisoner as an habitual ; it is only *one of the circumstances* to be taken into consideration in deciding whether a prisoner is by habit a robber, house-breaker, dacoit, thief, or receiver of stolen property, or habitually commits any of the offences specified in sub-rules (i) and (ii). A prisoner who, although previously convicted of the offences mentioned in these sub-rules, has never been imprisoned (*e.g.*, who was previously sentenced to whipping or fine, was released under section 562, Code of Criminal Procedure, or being a young offender, was detained in a Borstal or Senior Training School) should under no circumstances be classified as an habitual unless there are strong reasons for so classifying him under sub-rule (iv). The words 'It is sufficient if the Court is satisfied on such evidence as may be produced by the Police or Superintendent of the Jail that a prisoner has actually been previously convicted' in sub-paragraph (6) of paragraph 737, refer merely to the sufficiency of proof of the fact of previous conviction, and not to the sufficiency of evidence for classification as an habitual.

They do *not* mean that to be satisfied that a prisoner has been previously convicted is sufficient ground for classifying him as an habitual.

Whenever a prisoner is classified as an habitual, full reasons for the classification must be set out in the judgment as well as on the Jail warrant. See also paragraph 692 as regards the history of the accused.

739. Sessions Judges and Magistrates in all cases of conviction shall note on the police form showing the result of the trial and order of the Court, which is returned to the police at the conclusion of the trial, and also on the sentence warrant addressed to the officer in charge of the jail, whether the convict is to be classed as a habitual criminal or not.

Classification of
habituals.

740. See paragraph 714 with regard to the importance of the correct classification of convicts.

Star Class System of Classification of Prisoners.

741. (1) The Star Class System of classification of prisoners has been introduced in the Jails in Burma and the following instructions are issued to all Sessions Judges and Magistrates on whom the duty of classification in part will fall.

(2) The following classes of convicted offenders should not be recommended for classification as "Star Class": -

- (i) Prisoners classified as habitual offenders in accordance with the orders contained in Judicial Department Notification No. 121, dated the 4th May 1940, as amended by Notification No. 3, dated the 18th January 1950, and reproduced in paragraph 737. Only non-habitual offenders may be classified as "Star Class".
- (ii) Prisoners sentenced to Simple Imprisonment.

(iii) Youthful or adolescent prisoners merely on account of their age, as far as possible.

(3) The "Star Class" is confined to prisoners classified by Judges and Magistrates as non-habitual, and should consist of convicts who have not been previously convicted of serious crime and whose previous life has not been habitually criminal or their habits depraved. Facts which would entitle a prisoner to be classified as "Star" are that his previous character has been good, that his antecedents are not criminal, and that his crime does not indicate grave cruelty or gross moral turpitude or depravity of mind. The age of the prisoner on the date of any previous conviction and on the date of his present offence should be taken into account, and the whole circumstances of the case should be considered with a view of determining whether the prisoner is already of so corrupt a mind or disposition that he may contaminate others and cannot be much further corrupted himself. Generally speaking, the classification as "Star Class" should be restricted to prisoners convicted of comparatively venial offences, and to prisoners who are clearly deserving of preferential treatment.

If a Judge or Magistrate is in doubt as to whether a prisoner should be recommended for classification as "Star" or not, he may, after passing judgment in the case, make enquiries of the police or of any respectable persons whom the prisoner may name, or who are likely to be able to furnish reliable information about the prisoner, before making his recommendation. The statements made by persons from whom such inquiries, if any, are made should be briefly recorded, but not on oath, and should be filed in the case-record immediately after the judgment.

(4) In the case of every convicted person who is recommended for inclusion in the "Star" class, the Judge or Magistrate shall attach to the warrant of commitment to jail a statement of particulars concerning the convict and his offence in the prescribed form. The particulars required by this form shall be entered therein by the Judge or Magistrate personally.

(5) The classification of a prisoner as “Star Class” is an executive and not a judicial act. The recommendation of the Judge or Magistrate in this matter is not binding on the Jail authorities and may not be revised by the Superintendent of the Jail in which the prisoner is confined. The recommendation of the Judge or Magistrate is in fact advisory only, and the final classification will be made by the Superintendent of the Jail, subject to the control of the Inspector-General of Prisons.

Classification of Convicted Prisoners

† 742. x x x x x x x x x x x x x x x x x x x x x x x x x x x x
x x x x x x x x x x x x x x x x x x x x x x x x x x x x

†Judicial Department (Jail Branch) Notification No.2, dated
the 15th January 1964.

Chapter24

About Child Offenders.

743. The Child Law The State Law & Order Restoration Council Law No. 9 of 1993 was promulgated on 14th July 1993. The Young offenders Act of 1939 and The Children Act of 1955 were replaced by this law. Therefore the Juvenile Courts shall follow the provisions The Child Law of 1993 in the trial of child offenders and young offenders.

744. In The Child Law child is defined as a person who has not attained 16 (Sixteen) years of age and youth as person who has attained 16(sixteen)years of age but has not attained 18 (eighteen) years of age. Therefore the Juvenile Court shall follow the provisions of sections 41,42,43,44,45,46,47,48,49, of The Child Law 1993.

745. It is instructed to follow the provisions S-28 and the section provisions as follows: -

" Nothing is an offence which is done by a child under seven years of age." Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient nationality of understanding to judge of the nature and consequences of his conduct that occasion.

The trial and conviction of child offenders.

746. The Juvenile Court

(a) On receipt of a juvenile case shall scrutinize supporting evidence in respect of the age of the child and determine whether a child or not on the Birth Certificate, National Identity Card, Foreigner's Registration certificate, true extract of the school substantial evidence, submitted with the case.

(b) Shall have jurisdiction in respect of a child who has not attained age of sixteen years at the time of the commission of the offence and shall proceed with the trial after recording the decision that offender is a child .

(c) During the trial the child on the execution of a bond shall be released or entrusted to the care of parents or guardians with certain conditions or temporary care station for child welfare or other suitable place with certain conditions. Under no reason remand shall be ordered.

(d) Pending the trial even if the child attains sixteen years of age he shall be deemed to be a child and passed order under this Law.

(e) Shall try juvenile offences punishable with death or transportation or imprisonment for a term exceeding 3 years in the manner in which a warrant case is tried.

(f) Shall try juvenile offences other than the type of offences in sub-section (e) in the manner in which a summons case is tried.

747. The Juvenile court shall abide by the following in trying juvenile cases: -

(a) Shall try the case in a Separate Court or building or if there is no Separate Court or building in a building or room other than that in which the ordinary sittings of the court are held.

(b) No person other than the parents, guardians, staff of the Court, Law Officers, members of the Myanmar Police Force on duty and not in uniform, persons directly concerned with the case and persons who have been granted permission by the Juvenile Court shall be present at the place of trial;

(c) If the child or his parents or guardians can not or do not wish to engage a lawyer and makes an application to be defended with the assistance of to do so;

(d) Shall make available the service of an interpreter if necessary.

(e) Shall dispose of the speedily.

748. The Juvenile Court has the following powers in respect of the trial of Juvenile Cases: -

(a) may direct any one who is present at the place of trial including the child to leave court house at anytime during the trial if it is considered it is necessary in the interest of the child. If necessary is may cause to use force in so directinge to leave the Court house.

(b) may try the case in the inquiry or trial of the case if it is considered that the presance of the accused is not necessary;

(c) may direct the parents or guardians in whose custody and care the child is at present to attend everyday on which the sittings of the Courts are held.

(d) may allow the inserting and announcing of information regarding the identity of the child who is accused of committing on offence or who is a witness in any case, in the Radio, Television, Newspapers, Magazines, Journals and Publications and displaying and making use of photograph of the child if it is beleived to be of benefit to the child.

(e) may direct the relevant probation affair to make inquiries and to summit a report of the personal history, character, conduct, behaviour and environmental circumstances of the child and his parents or guardians.

(f) may, if it is considered appropriate inform the child or his parents or guardian of gist of the report submitted by the probation officer under sub-section (e) of section 43 of the law.

749. The Juvenile court shall., before passing an order of a child who is found guilty, take into consideration the followings and pass an order which is reformative and which will be beneficial to the child; -

- (a) the age and character of the child;
- (b) the environment circumstances of the child;
- (c) the main cause of committing the offence;
- (d) the report submitted by the Probation officer;
- (e) other circumstances and facts which are required to be

taken into consideration in the interest of the child.

750. Notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child.

751. A child shall not ordinarily be sentenced to imprisonment. Only if the Juvenile court is satisfied that the child has committed on offence punishable with death or transportation for life under any existing law or that the child is of so unruly or depraved a character or absolutely uncontrollable, he shall be sentenced to imprisonment. Such sentence of imprisonment shall not exceed a term of seven years.

752. The Juvenile court may pass only of the following orders in respect of a child who should not be sentenced to imprisonment.

(a) if the offence committed is not serious and the character of the child is not yet perverted;

(1) may release him after due admonition;

(2) may imposed a fine if he has attained the age fourteen years and has income. If he is a child who has no income a fine may be imposed on his parents or guardians;

(b) whether the offence committed is serious or not, if the character of the child is not yet perverted and in order to deter further commission of offence such a child shall be entrusted to the custody of his parents or guardians on execution of a bond for good behaviour for a period not exceeding three years.

(c) may cause the child to submit to the supervision and management of Probation officer for a period not exceeding three years.

(d) whether the offence committed is serious or not, or if the child is of perverted character or if the child is not yet perverted but has no parents or guardians or even if the child has parents or guardian but they are not in a position to admonish and take care of the child, may commit such child to the custody of any training school for a minimum term of two years or till he attains the age of eighteen years as a maximum term;

753. The Juvenile court may -

(a) in addition to the sentence of imprisonment passed under section 46 or passed under section 47 of

(b) if the following conditions are fulfilled pass an amending order to entrust a child who complied with the order passed under section 47 sub-section(c) or sub-section (d) for at least one year to the custody of his parents or guardians concerned with or without a bond

(1) improvement in the moral character of the child;

(2) being a child who has parents or guardian;

(3) not being an offence under Narcotic Drugs and psychotropic Substances Law;

(c) exercise the power mentioned in sub-section (b) of Section 48 on the application of the Principal of the training school concerned, Probation Officer or parents or guardians;

754. (1) There shall be right of appeal or right of revision against the order or decision passed in accordance with the provisions of the Criminal Procedure Code.

(2) If a sentence of imprisonment is passed on the child by a Juvenile or an Appellate court or a court of Revision a copy of the sentence shall be sent to the Ministry.

Trial of youth offenders

755. A Youth Trial of youth who has committed offence who at the time of commission of the offence has attained the age of sixteen years but has not attained the age of 16 years shall be sent up for prosecution to the court which has jurisdiction in respect of the offence. In sending up such case for prosecution it shall be accompanied by supporting evidence with respect to the age of the youth.

756. The relevant court shall before commencement of the trial of the offence with which the youth is charged, decide whether the accused is a youth or not. From the birth certificate, citizenship scrutinising card, Foreigner's Registration certificate, true copy of an extract of the school Admission Register, Doctor's medical certificate or other valid supporting evidence included in the proceedings and record such decision.

757. Notwithstanding the fact that the youth has attained the age of eighteen years on the date of passing the sentence, the court shall deem if such person were youth and pass order accordingly.

(2) The court shall take into consideration the following before passing an order on the youth who is found guilty; -

- (a) The age and character of the youth;
- (b) The environmental circumstances of the youths residence.
- (c) The physical and mental condition of the youth;
- (d) The cause of committing the offence notwithstanding anything contained in any existing law -

(a) a sentence of death or transportation for life shall not be passed on the youth.

(b) if a sentence of imprisonment is passed on the youth, its maximum term shall not exceed ten years.

CBM3

758. As the Ministry of Social Welfare, Relief and Resettlement informed the Supreme Court by its letter no2160/sa.27/law/2-3/91, The Supreme Court redirect the Township Court to send the children who committed the offence to the different types of training schools mentioned below: -

- (a) Boys under twelve years of age to Youth Training School at No 114(B) Inya Road, Yangon:
- (b) Boys above twelve years of age to youth Training School, Hnget-Au-San Village, Yangon Division;
- (c) Boys above twelve years of age who committed petty crimes to Training School at No 64. Kaba-aye-zedi Road at Myaukpyin, Mandalay and at Khangyi ward, Mawlamyaing.
- (d) Girls shall be sent to Training School for Girls at No 49. Malikka Street, Yangon and Training School for Girls at the corner of 30th and 64th street, Mandalay.

759.[†] x x x x x x x x x x x x x x x x x x x x x x x x x x x x
to

[illegible]

764. Section 52 of The Child Law contains provisions with regard to custody and care of Children and Youths in prisons. The Jail Department has made arrangements for the separate admittance and receptacles of child prisoners and youth prisoners so as to enable to put all the such prisoners at Meiktila Jail alone. The Jail Department has under its letter No. 1001/1/2/U Sa. dated 16-2-95 informed the Supreme Court to send those children and youths who are convicted of offences by the Juvenile Courts and the Supreme Court has redirected all the courts concerned on. 7th March 1995.

† Deleted by Law No.9/93

CHAPTER XXV.

Appeal, Reference and Revision.*Limitation of Appeals.*

Limitation
Act,
Second
Schedule.

765. The periods within which appeals must be brought in the Court to which an appeal lies are given below. These periods are to be calculated from the date of sentence :-

Arts. 150.	(1) In an appeal from a death sentence passed by a Sessions Judge	7 days
154.	(2) In an appeal to any Court other than a High Court	30 days
155.	(3) In an appeal to a High Court except where death sentence has been passed or a judgment of acquittal	60 days

766. Ordinarily no application for revision will be considered, if filed more than 60 days after, the date of the last order complained of, unless it is accompanied by an explanation of the delay and the necessary affidavits.

Limitation of Revision
applications

Right of appeal.

767. (1) The only sentences that are not appealable are :-

- | | |
|------|---|
| | (a) a sentence of imprisonment not exceeding three months only, or of whipping only, passed by a Court of Session; |
| 413. | (b) a sentence of imprisonment not exceeding one month only, or of fine not exceeding K100 only, passed by a District Magistrate or a first class Magistrate ; |
| 414. | (c) in Summary trials, a sentence of imprisonment not exceeding one month only, or of fine not exceeding K200 only, passed by a Magistrate empowered under section 260. |

415A. (2) Where more persons than one are convicted in one trial and an appealable sentence has been passed in respect of anyone of such persons, all or any of the persons convicted have a right of appeal.

(3) If any of the accused in a case has been sentenced by a Magistrate in the exercise of Special Powers for a term of imprisonment exceeding four years, or to transportation, the appeal of every accused lies to the High Court.

Appeals under Preventive Sections of the Code.

406. 768. Appeals from orders under section 118, requiring a person to give security for keeping the peace or for good behavior ordinarily lie, under section 406, to the Court of Session.

But under the first proviso to that section the President of the Union has declared that in the following districts appeals from such orders made by a Magistrate other than the District Magistrate shall lie to the District Magistrate :-

Pegu.	Shwebo.	Insein. ⁵	Rangoon. ¹⁰
Tharrawaddy.	Mandalay.	Yamethin. ⁵	Pyapôn. ¹¹
Henzada.	*Amherst.	Kyaukse. ⁵	Maubin. ¹¹
Thayetmyo.	Myingyan. ¹	Prome. ⁶	Kyaukpyu. ¹²
Magwe.	Meiktila. ²	Toungoo. ⁶	Lower Chindwin. ¹³
Minbu.	Katha. ³	Mergui. ⁷	Akyab. ¹⁴
Pakōkku.	Bassein. ⁴	Thatôn. ⁸	Myaungmya. ¹⁵
Sagaing.	Hanthawaddy. ⁵	Tavoy. ⁹	

* Judicial Department Notification No. 51, dated the 21st April 1924.

¹ Judicial Department Notification No. 502, dated the 4th June 1924.

² Judicial Department Notification No. 147, dated the 3rd July 1924.

³ Judicial Department Notification No. 622, dated the 8th July 1922.

⁴ Judicial Department Notification No. 156, dated the 12th July 1924.

⁵ Judicial Department Notification No. 246, dated the 25th September 1924.

⁶ Judicial Department Notification No. 256, dated the 9th October 1924.

⁷ Judicial Department Notification No. 276, dated the 3rd November 1924.

⁸ Judicial Department Notification No. 317, dated the 22nd December 1924.

⁹ Judicial Department Notification No. 318, dated the 22nd December 1924.

¹⁰ Judicial Department Notification No. 98, dated the 29th June 1925.

¹¹ Judicial Department Notification No. 264, dated the 28th December 1925.

¹² Judicial Department Notification No. 76, dated the 4th May 1927.

¹³ Judicial Department Notification No. 75, dated the 20th March 1929.

¹⁴ Judicial Department Notification No. 202, dated the 20th June 1934.

¹⁵ Judicial Department Notification No. 335, dated the 17th November 1932.

Appeals in Maintenance Cases.

769. An appeal lies to the Court of Session from any order of a Magistrate passed under section 488 or section 489.

Petitions of Appeal or for Revision.

770. Except in the case of petitions forwarded by the Superintendent of a Jail, no attention shall ordinarily be paid to petitions of appeal or revision if forwarded through the post. All petitions so received shall, unless the Court after perusal thinks it necessary to take action upon them, be kept apart without being registered, and if the petitioner does not appear within one month in person, or by duly authorized agent, or pleader, shall be destroyed.

771. Several persons convicted in the same case may appeal, or apply for revision, either jointly in one petition, in which case the petition shall be registered as one appeal or revision case, or separately, in which case the petitions shall be registered as separate appeals, or revision cases.

772. (1) A petition of appeal, by or on behalf of a convicted person, must be signed either by the appellant himself or by a pleader authorized by writing signed by the appellant to present an appeal for him.

(2) (i) A petition of appeal or for revision signed and filed by a pleader on behalf of a prisoner in jail under an authority signed by the prisoner need not bear a court-fee stamp.

(ii) A pleader appearing in Court on behalf of a prisoner in jail need not file a stamped power of attorney, as long as he produces a "written authority" signed by the appellant or applicant in the presence of the jailor or any other officer in whose custody he was. A pleader acting however without such a written authority must file a stamped power of attorney (*cf.*, paragraph 455).

773. Every petition of appeal or revision shall, except where the appellant or petitioner is in jail, be presented in open Court by the appellant or petitioner in person, or by his duly authorized agent or pleader, and the date of presentation shall be noted on it.

If the presiding officer of the Court is absent on tour, the petition may be presented as follows :-

In the Sessions Court, to the Head Clerk.

In the District Magistrate's Court, to the officer appointed by the District Magistrate to be in charge of the current duties of his office during his absence.

If the appellate Court is that of a Subdivisional Magistrate specially empowered to hear appeals, the Court shall, for purposes of limitation, be held to be closed when the Subdivisional Magistrate is absent from his headquarters on tour.

420. 774. A prisoner in jail may present a petition of appeal or for revision to the officer in charge of the jail, who shall forward it to the appellate or revisional Court concerned.

Where the appeal lies to the High Court from the judgment of a Sessions Judge or Magistrate, other than a Magistrate or the Rangoon Town District,, the petition of appeal must be accompanied by a copy of the judgment appealed against. Where, however, the appeal lies to a Court other than the High Court, or is from the judgment of a Magistrate of the Rangoon Town District, the petition need not be accompanied by a copy of the judgment.

A petition for revision must invariably be accompanied by copies of the judgments for the revision of which application is made.

If revision is sought of a judgment, order or sentence in a case tried by jury, the petition must be accompanied by a copy of the judge's charge to the jury.

The officer in charge of the jail before forwarding a petition of appeal or for revision should satisfy himself that the petition is accompanied by copies of all necessary papers.

775. The officer in charge of the jail shall note on every petition of appeal or for revision presented to him the date of application by the prisoner to the officer in charge of the jail for a copy of the judgment, the date of the actual delivery of the copy to the prisoner, and the date of the presentation of the petition to the officer in charge of the jail. He should also note thereon the prisoner's jail number.

In the case of appeals filed by pleaders, the prisoner's jail number should be noted on the "written authority" which is signed by the appellant in the presence of a jailor.

776. Petitions of appeal, or for revision, not accompanied by copies of the necessary papers, and petitions of appeal in cases where no appeal lies, should not be transmitted to the appellate or revisional Court, but should be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation.

777. In any case where an appeal lies, no application for revision made by an accused can be entertained. Where no appeal lies, the accused may apply for revision.

778. (1) As soon as an appealable sentence is passed by a Magistrate, sentencing an accused person to imprisonment, the Magistrate shall ask the prisoner whether he intends to appeal, and if he expresses his intention of doing so the record must be forwarded at once to the appellate Court concerned. The prisoner should be informed that he is entitled to a free copy of the judgment. The Magistrate must also satisfy himself that the case number, year, name of the convicting court, and the section under which the prisoner is convicted, are correctly and clearly stated in the warrant of commitment to jail, to ensure that the particulars may be correctly shown in the memorandum of appeal. Except in the case of Magistrates of the Rangoon Town District, when the appeal lies to the appeal lies to the High Court the record must not be sent until a copy of the judgment has been supplied to the accused for purposes of appeal.

(2) In all cases where a copy of judgment is supplied for purposes of appeal, as soon as the copy has been supplied the record shall be submitted direct to the appellate Court with a report in Form ~~Judicial~~ General 14 that a copy of a judgment has been supplied.

(3) In submitting records to the High Court for purposes of appeal, process-files should not be sent up, unless expressly called for by the High Court, if such process-files are maintained separately from the main record. *This does not apply to cases where a death sentence was passed. In such cases the whole record must be submitted.* In hurt and murder cases (in which a death sentence is not passed) the police medical report, if not admitted as an exhibit but filed in a separate process-file, should be removed from the process-file and submitted with the main record.

779. Petitions of appeal or revision from a prisoner in jail shall be forwarded by the officer in charge of the jail direct to the appellate or revisional Court, while intimation of the fact in the case of an appeal shall at once be given in Jail Form No. 69 to the Court whose sentence or order is appealed against.

On receipt of the notice the Sessions Judge or Magistrate, as the case may be, shall at once forward the record of the case direct to the appellate Court, if it has not been forwarded already. No notice to the Sessions Judge or Magistrate need be given if the petition presented to the officer in charge of the jail is a petition for revision.

Admission and Hearing of Petitions of Appeal or for Revision.

780. All petitions of appeal, or for revision, when presented in the manner laid down in these rules, and all petitions received by post on which any action is taken by the appellate or revisional Court, shall be immediately registered in the proper register; but a petition of appeal shall not be admitted, and notice, under section 422, shall not be issued without the orders of the presiding Judge of the appellate Court. The date of presentation or receipt (if received by post), registration, and admission of any petition shall be noted in the diary of the proceedings of the appellate Court.

781. If the appellant presents his appeal in person or by a pleader, a date shall be fixed for hearing the petition, and notice of such a date shall be given to the appellant or his pleader, provided that, with the consent of the appellant or his pleader, a petition of appeal may be heard on the day on which it is presented.

782. If the appellant is in jail, and sends his petition of appeal through the officer in charge of the jail, it may be heard either on the day on which it is presented, or on a date fixed for hearing it, as the Judge of the appellate Court thinks fit.

140. 783. No party has any right to be heard, either personally or by pleader, before any Court when exercising its revisional jurisdiction unless the Court proposes to pass an order to the prejudice of the accused.

421. **784.** Before summarily dismissing a petition of appeal the appellate Court is not bound to call for, or to look into when sent up, the record of the original case. It should, however, do so in all cases in which the judgment of the original Court does not clearly set forth the facts of the case or the evidence on which the conviction was based, and also in all cases where, from a perusal of the judgment of the original Court, the appellate Court thinks there may be reasonable doubt as to the guilt of the convicted persons.
422. **785.** In an appellate Court does not summarily dismiss a petition of appeal under section 421, it **must admit the** Admission of appeal petition and fix a date for hearing the appeal, of which due notice (Form Criminal No. 158) must be given to the appellant or his pleader, and to the officers appointed by the President in that behalf under section 422* namely the Attorney-General and the Director, Bureau of Special Investigation in respect of appeals preferred to the High Court and the District Magistrate in respect of all other appeals.
- 424,
367. **786.** By section 424, the provisions of section 367 are made Judgment in appeal. applicable to the judgments of Courts of appeal other than the High Court; but where the point or points for determination have been sufficiently set forth in the judgment of the original Court, it is not necessary, though it may be sometimes desirable, that the appellate Court should again set them forth in its judgment. It is necessary, however, that the appellate Court should give fully the seasons for its decision.

References to the High Court under Section 438.

787. All reports under section 438 should be by proceeding containing the following particulars -

- (i) a brief analysis of the case;
- (ii) the sentence or order of the subordinate Court, with the name of, and the powers exercised by, the Magistrate passing it;

* Judicial I Branch Notification No. 30, dated the 22nd January 1948 and Ministry of Judicial Affairs, General Branch Notification No. 533, dated the 3rd December 1955.

- (iii) the particular portion of the finding, sentence or order which is considered incorrect, illegal, or improper, or the particular portion of the proceedings which is considered irregular;
- (iv) the grounds on which it is suggested that the High Court should exercise the powers conferred by section 439;
- (v) a note showing how much of the sentence passed has been already undergone by the accused; and if the sentence was one of fine or whipping whether the fine has been realized or the whipping inflicted;
- (vi) the recommendation of the Judge or Magistrate;
- (vii) a note whether the execution of the sentence has been suspended.

NOTE._ These particulars should not be numbered nor set out in paragraphs corresponding to the numbers (i) to (vii) above. The proceeding should be composed in the same way as a judgment.

788. A true copy of the report should be forwarded to the Registrar with the records of the case reported upon and with the revisional proceedings of the Court or Magistrate making the report. No covering letter should be sent.

789. More than one case should not be reported upon in one proceeding.

790. The inferior Court should, whenever it may seem desirable to do so, be called on to submit an explanation with regard to the point on which it is proposed to make the reference, and the explanation should be sent with the report.

791. In cases in which an appeal lies from the sentence or order in respect of which it is proposed to make a report, the report should not ordinarily be made until the period of appeal has expired.

792. The provisions of section 391, extending the period during which the execution of a sentence of whipping may not be carried out in the case of an appeal being preferred, do not apply to a report under section 438 so that when a recommendation is made that a sentence of whipping be reversed the execution of the sentence should always be suspended by express order under the provisions of the latter section.

- 438 793. (1) Before reporting a case to the High Court under section
 438 with a recommendation to set aside a conviction, a Sessions
 Judge should issue a notice to the District Magistrate, not as a matter
 of legality but as a matter of courtesy and convenience; but in other
 types of revision cases, for instance, illegal sentences, imprisonment
 of the wrong kind, excessive imprisonment in default of payment of
 fine, etc., no notice to the District Magistrate need be issued.
- 439 (2). (2) Section 439 (2) is complied with if the respondent has an
 opportunity of being heard either personally or by pleader, either
 before the Sessions Judge or District Magistrate who reports the
 case or before the High Court. Consequently the respondent should
 be summoned to appear, or, if in custody, be produced; before the
 Sessions Judge or District Magistrate, and, if he appears, heard
 before the reference is made, and his statement or argument should
 be incorporated in the report made under paragraph 812. If a Public
 Prosecutor appears before the High Court to report the reference,
 the respondent is entitled to be heard before the High Court.

Communication of Orders of Appellate or Revisional Court.

794. A Court of appeal, revision, or reference shall always certify its decision to the Court whose judgment or order has been referred or appealed against. Where the judgment or order is that of a Magistrate subordinate to the District Magistrate the certified decision shall be sent through the District Magistrate. The original proceedings shall at the same time be returned to the lower Court. Where a retrial is ordered two copies of the judgment should be sent to the lower Court (*cf.*, paragraph 1127).

795. A Court of appeal, revision, or reference, in all cases where it does not (1) modify a sentence, or (2) order a retrial or commitment for trial, or (3) set aside both the conviction and sentence, and at the same time direct the release of the accused, shall, at the conclusion of its proceedings, send direct to the officer in charge of the jail in which the accused is confined a certified copy of its formal order for the information of the prisoner : provided that this rule does not apply to cases in which the revisional Court has not been moved by application of the accused to exercise its revisional jurisdiction, and sees no ground for interfering with the conviction and sentence passed by the lower Court.

796. If a Court of appeal, revision, or reference, (1) sets aside a conviction and sentence of the lower Court and directs the release of a prisoner in jail, or (2) modifies the sentence of the lower Court or orders a retrial or commitment for trial, it shall send direct to the officer in charge of the jail in which the prisoner is confined (i) a warrant of release (Form Criminal 175) or (ii) a fresh warrant prepared in conformity with the orders passed and, where necessary, a warrant for the detention of the accused. On receipt of such warrant the officer of the jail shall forward the warrant under which the prisoner was sentenced with an endorsement stating how it has been replaced to the Court from which the committal warrant issued, and that Court shall thereupon inform the appellate, revisional, or reference Court (in Form Criminal 125) of the return of the committal warrant and of the report made by the officer in charge of the jail.

797. Sometimes difficulty is experienced in tracing the entries in Jail Appeal Registers when formal orders are received from appellate Courts. To obviate this, the jail number of the prisoner concerned should invariably be entered in the formal orders issued by appellate Courts to jails intimating the results of criminal appeals.

798. In cases dealt with by the High Court, it will comply with the provisions of paragraph 795 and also with the provisions of paragraph 796, so far as these latter provisions relate to acquittals or retrials or commitments for trial. Where the High Court alters the conviction only, or the sentence only, or both the conviction and sentence, of the lower Court, it will, by issue of a formal order, direct the lower Court to make such orders as are conformable with its judgment or order, and such Court shall thereupon issue a fresh warrant carrying into effect the order of the High court.

On receipt of such fresh warrant the officer of the jail shall forthwith return to the said lower Court the committal warrant under which the prisoner was originally sentenced with an endorsement stating how it has been replaced, and thereupon that Court shall forthwith inform the High Court (in Form Criminal 125A) of the issue of the fresh warrant and of the return of the committal warrant by the officer in charge of the jail. At the same time as the formal order to the lower Court is issued, the High Court will also send direct to the officer in charge of the jail in which the prisoner is confined a certified copy of its formal order for the information of the prisoner.

799. If the prisoner shall have already undergone the modified sentence of imprisonment awarded by the Court of appeal, revision, or reference, at the time when the order of that Court is passed, that Court shall send a warrant of release to the officer in charge of the jail (Form Criminal 178) on receipt of which the said officer shall proceed as laid down in paragraph 796.

381. **800.** These rules do not apply to cases in which the sentence is reversed or modified by the High Court under section 376. In such cases the Sessions Judge should act in conformity with section 381 of the Code (*see* Forms Criminal 102, 102A).

801. Warrants of release may be sent by registered letter to the officer in charge of the jail. Warrants or orders of release by telegram are prohibited.

802. When a sentence in any case sent up by the police on a charge sheet or falling under the sections mentioned in paragraph 1454, Police Manual, 5th Edition, is altered in appeal or revision, the District Magistrate should inform the District Superintendent of Police by sending him a memorandum in Form Criminal 180. The District Superintendent of Police may also be allowed to peruse the record if he so desires.

Appeals against Acquittals.

803. (1) The statutory limitation for the period within which an appeal against an acquittal can be filed is six months, but no such appeals will ordinarily be sanctioned after the expiration of three months from the date of the order of acquittal.

The President of the Union wishes, however, to emphasize the extreme importance of applications for appeals against acquittals being dealt with as expeditiously as possible and earnestly hopes that this will be carefully borne in mind by all officers, and that recommendations for appeals against acquittals will be submitted with the least possible delay.

(2) Full opportunity will be given to an accused person against whose acquittal an appeal has been filed, to attend, should he so desire, either personally or by a representative, when the appeal is being heard. If the accused is in custody, arrangements will be made in every case for him to be brought before the appellate Court. If he is not in custody, in case of poverty, he will be provided with sufficient funds to enable him to proceed to the appellate Court, *i.e.*, his fare for the journey to the appellate Court, and in the event of the appeal being dismissed from the appellate Court to his place of residence, and in addition subsistence allowance at the rates laid down for 'Ordinary Labouring Classes' in Rule III (1)* of the Rules for the payment of expenses of complainants and witnesses attending criminal Courts published with Judicial Department Notification No. 7, dated the 3rd January 1923, as subsequently amended.

(3) A fee of K 50 for the counsel engaged on behalf of the accused will also be paid in all cases of poverty whatever may be the result of the appeal, and whether the accused is, or is not in attendance when the appeal is heard. In such cases, the Government will arrange for counsel to appear on behalf of the accused, but the accused is at liberty to engage counsel himself and supplement the fee paid by the Government, in order to obtain an advocate of superior calibre should he so desire.

(4) When submitting a proposal that an appeal should be filed against an acquittal, Commissioners of Divisions will in future report whether the accused person is so poor that he requires assistance as specified in paragraphs (2) and (3) above, and whether he desires to engage counsel himself. They will also advise what amount, if any, including subsistence allowance should be paid to an accused person who is not in custody to enable him to proceed to the appellate Court.

* Judicial Department Circular No.7, dated 26th May 1969.

(5) Sanction to the payment of the amounts considered necessary under paragraphs (2) and (3) above will be given at the time when orders are passed that an appeal shall be filed. Charges under the rules referred to will be incurred by the Deputy Commissioners and will be debitable to the head '22G. Criminal Courts-*b*. Other Magistrate - (4) contingencies.' The expenditure on account of fees paid to advocates and pleaders not in the service of the Government incurred by Commissioners of Divisions, the Registrar, High Court and District Magistrates will be debitable to the head '22C. Law Officers-*b*. Mofussil Establishment-(4) Contingencies'; and that incurred by the Attorney-General will be debitable to the head '22C. Law Officers-*a*. Attorney-General-(4) Contingencies.'

(6) Recommendations for appeals against acquittals will be made by officers in their executive and not in their judicial capacities. A Deputy Commissioner who desires to recommend an appeal against an acquittal will forward the record of the case, together with a *certified copy* of the judgment it is proposed to appeal against and a concise history of the facts and a statement of the grounds of appeal, too the Commissioner of Division, who will, if he agrees with the Deputy Commissioner, submit the case for the orders of the President of the Union.

(7) In submitting proposals for appeals against acquittals, Commissioners and Deputy Commissioners will invariably give their own independent opinions and not merely forward the representations of Public Prosecutors or District Superintendents of Police.

(8) The right of appeal under section 417 of the Code of Criminal Procedure will be exercised in important cases only.

Important cases are defined to be-

- (a) cases of intrinsic importance in which the crime is serious and the judgment of the Court is considered to be a grave miscarriage of justice, or
- (b) cases which may not be of intrinsic importance, but in which it is necessary to obtain an authoritative decision upon a doubtful point of law seriously affecting administrative action or the interests of the public.

(9) An appeal will not ordinarily be ordered on an application by a private individual unless the application is supported by the recommendation of the local administrative officers.

(10) The orders relating to assistance to be given to poor persons shall be applied also in the cases of applications to the High Court for enhancement of sentence where the accused person is in indigent circumstances. The report required by paragraph (4) above shall be submitted in such cases also.*

427 804. When on an appeal which has been preferred against an acquittal by the President of the Union under section 417, Code of Criminal Procedure, an order is passed for the arrest of the accused under section 427, Code of Criminal Procedure, the Court before which the accused is produced shall, after taking action under section 427, Code of Criminal Procedure, report to the High Court whether the accused has been released on bail pending the disposal of the appeal or committed to prison, and, if so, the prison in which he has been detained.

* Judicial Department 'G' Circular No.19 of 1940, dated the 23rd May 1940.

CHAPTER XXVI

Public Prosecutors

805. The Government has appointed the Attorney General and the Deputy Attorney General as Ex-officio Public Prosecutors generally. Among the duties of the Attorney General are included the ones such as bringing to the notice of the State Peace and Development Council; the Government; the departments if their acts are not in accordance with law; tendering legal advice when so requested by the State Peace and Development Council; the Government or the Ministry; giving legal protection to the people in order to enable them to fully enjoy their legal rights and privileges; filing necessary appeal or revision to the Supreme Court in respect of adjudication of Courts in different levels that are not in accordance with law; scrutinizing; drafting and translating laws; revising law, revising laws to conform with the times and issuing law manuals, performing other duties as are prescribed by existing laws or by procedures or directives made under this law, and other duties as are assigned by the State Peace and Development Council.

The Attorney General has issued Directive No. 1/88 in exercise of the duties and functions conferred on him for further performance to duties. According to that directive, all Law Officers (public prosecutors) shall carry out the duties efficiently and without failure since they are service personnel of the State and that relevant Law Officers shall perform the duties of Public Prosecutors as may be necessary at different levels of Courts of law. In addition, the Law Officers at different levels shall carry out their duties and functions as prescribed in the existing laws or directives or memorandums having effect as directives as well as the instructions given by the different levels of Peace and Development Councils.

Besides, the attorney General in exercise of the duties and powers conferred on him has prescribed the duties and functions of the Law Officers assigned to State/Divisional level, District level and Township level Law Offices.

It is prescribed that Law Officers at different levels shall perform the following duties and functions under the supervision of the Attorney General:-

- (a) tendering Legal advice to the Peace and Development Council, Government departments and organizations such as boards and corporations at respective levels.:
- (b) examining any complaint lawfully made by a citizen who is said to be deprived of his rights and privileges and taking necessary measures;
- (c) tendering advice in cases which are to be sent up to the Court to be in accordance with law;
- (d) appearing at the trial of a person who has violated criminal law;
- (e) acting or pleading for the State in civil cases where the State is plaintiff or defendant;
- (f) submitting of the Attorney General judgements, orders and decisions of the judicial Courts which are found to be inconsistent with law; and
- (g) performing and exercising such other duties and powers prescribed by the Attorney General.

The Law Officers, if they are not permitted to serve exceeding 60 years of age in respect of special cases for public interests under the Fundamental Rule 56, paragraph (8), sub-paragraph (3) amended by Notification No. 587 dated 7th November, 1953 of the Department of Finance and Revenue, shall take pension when attaining the age of sixty.

Law Officers shall not only be entitled to enjoy the salaries or pay scales prescribed by the Government from time to time but the existing rules and bye-laws in respect of travelling allowance, leave and pension of the officers of the same rank of other Government Departments shall also be relevant to the Law Officers.

The Law Officers shall not perform non-governmental private case.

RULES FOR THE REPRESENTATION OF THE GOVERNMENT IN CRIMINAL CASES

806. The following rules have been prescribed for the representation of the Government by the relevant authorities:-

I. REPRESENTATION OF THE GOVERNMENT BY THE
LAW OFFICERS

In respect of appeals preferred in the Supreme Court, the Attorney General of the Union of Myanmar is the officer appointed by the Chairman of the State Peace and Development Council to receive such notice.

NOTE-I. The Supreme Court, Yangon, on admitting an appeal, furnishing as of course to the Attorney General, without application by him under section 422, a copy of the grounds of appeal.

II. The Office of the Attorney General has, or should have, information regarding all cases whether tried by the State, Divisional Court or District Court or by Magistrates invested with special powers under section 30, Code of Criminal Procedure, in which the appeal lies to the Supreme Court.

III. (i) When a notice of appeal is received from the Supreme Court, the Attorney General before deciding whether a Law Officer should be asked to appear on behalf of the Government, shall first consider whether there is any reasonable probability of the appeal succeeding if an appearance on behalf of the Government is not made. The fact that, in a jail appeal, the accused will, usually be unrepresented should be taken into consideration. No requisition shall be made in unimportant cases and even in important cases where there is no reasonable ground to apprehend that the appeal will succeed. A perusal of the ground of appeal should normally suffice with the Attorney General's own knowledge of the case for determining this point. If it is considered that the appearance of a Law Officer is necessary, the Attorney General shall at once requisition his services.

(ii) In every appeal against a conviction for murder, the Attorney General will instruct the Law Officer to appear as a matter of course.

IV. If the Law Officer is not satisfied that his services are necessary in any particular case, it is open to him to make a further reference to the Attorney General.

V. (a) The Director of the Prosecution Department on behalf of the Attorney General, when instructing the Law Officer to appear in appeals or revisions in the Supreme Court, should not be content merely to request him to appear and support the order or conviction as the case may be but should, to facilitate his work and assist in the exhaustive presentation of the case, embody in his instructions such remarks as may occur to him in connection with it, reference to any authorities with which he may be acquainted, and suggestions as to the points to which attention should be specially directed in the argument.

(b) When any important principle is involved in a case, the Law Officer shall refer to the appropriate branch of the office of the Government in order to ascertain if the Government has any special instructions to give or wishes to indicate any matters on which stress should be made.

VI. In cases where the Attorney General or the Law Officer feels strongly that it would not be consistent with his duty to the Court to support a conviction and that he should withdraw from the case, he may do so on his own responsibility, but he should intimate the reasons for his action as early as possible to the officer instructing him.

VII. It may occasionally happen that, in an appeal or other criminal proceeding, the Supreme Court may, sus motis, express a desire that a Law Officer should appear on behalf of the Government although his services have not been previously requisitioned. In such a case the Law Officer should at once address the Government in the matter.

VIII. On receipt of notice of appeal in cases instituted by the Myanmar Railway Administration under the Railways Act or by the Forest Department, District Magistrates shall at once inform the General Manager, Myanmar Railways, or the Divisional Forest Officer concerned, as the case may be, of the time and place where the appeal will be heard so that they may arrange to assist the District Magistrate to uphold the conviction if they desire to do so.

MATTER REGARDING LAW OFFICER TO APPEAR
IN RESPECT OF CASE FILED AT COURT UNDER
THE MYANMAR IMMIGRATION (EMERGENCY
PROVISIONS) ACT, 1947

807. The Office of the Attorney General issued the memorandum dated 23rd February, 1990, on the matter relating to the Law Officer to appear in respect of the case filed at the Court under the Myanmar Immigration (Emergency Provisions) Act, 1947. In that memorandum, the following have been instructed: -

1. Since the Myanmar Immigration (Emergency Provisions) Act, 1947 has been amended by the Law Amending the Myanmar Immigration (Emergency Provisions) Act, 1947 (The State Law and Order Restoration Council Law No. 2/90), the penalty of section 13 can be passed from a minimum of 6 months to a maximum of 5 years under such amendment so that the cases instituted under that section has become cognizable offence. Thus, in the cases instituted under section 13 of that Law, the Law Officers shall appear on behalf of the Government.

2. It is hereby instructed that the Law Officers shall, in respect of the cases instituted under section 13 of that Act, carry out to get definite and complete evidentiary necessities, in appearing at the Court, perform in effective manner so that the ingredients of the offence shall be envisaged resulting no weaknesses, and submit to the Court for passing effective and deterrent punishment.

3. On failing to pass effective and deterrent punishment, the revision shall be filed and on acquittal, in spite of being true case, appeal against acquittal shall be submitted level by level.

MATTER REGARDING LAW OFFICER TO ABIDE BY
IN RESPECT OF APPLYING FOR BAIL AT COURT

808. The Office of the Attorney General has issued the Directive No.1/89 dated 13th January, 1989 on the matter regarding the Law Officer to abide by in respect of applying for bail at the Court. In that Directive.

1. The Law Officer shall, where the Court informs the Law Officer to give remark or argument in respect of submitting application by the accused to admit to bail in criminal case, carry out as follows: -

(a) where the offence for which bail is applied is an offence for which admitting to bail is expressly prohibited under any law, argument shall be submitted to the Court in accordance with the provision of that law.

(b) regarding non-bailable offence, if the accused applies to admit to bail, objection shall be submitted in accordance with section 497 of the Code of Criminal Procedure. Regarding the important case, for example, the case in which the State takes interest and the case that is concerned with the policy matter, the Law Officer, shall not merely objecting in the ordinary sense of the expression lodge strong objection to the Court emphatically giving reasons in full context why bail should not be admitted.

Where the organization that files the case submits points for objection to admit to bail, those points shall also be submitted to the Court.

(c) regarding bailable offence, in normal practice, it shall be submitted to the court in accordance with the provision of section 496 of the Code of Criminal Procedure.

(d) regarding bailable offence, where the organization that files the case gives information due to special circumstances, such points shall be submitted to the Court.

(e) where the relevant Peace and Development Council gives instruction regarding either bailable offence or nonbailable offence due to special circumstances, submission shall be made to the Court in accordance with such instruction.

DIRECTIVE REGARDING SCRUTINY WHETHER
APPEAL AGAINST ACQUITTAL SHOULD BE
SUBMITTED OR NOT IN CRIMINAL CASE

809. The Attorney General, in exercise of the power conferred on him under section 4, sub-section (d) of the Attorney General's Law, issued the Directive relating to Prosecution No. 1/98, dated 14th September, 1998, regarding scrutiny whether appeal against acquittal should be submitted or not in criminal cases. In that Directive -

1. On receiving the submission by any of the following organizations or persons suggesting appeal against acquittal under section 417 of the Code of Criminal Procedure should be submitted concerning the order acquitting the accused in criminal case, the Prosecution Department of the Office of the Attorney General and the different levels of Law Offices shall abide by this Directive: -

(a) submitting by Law Officer who conducted the trial of the case;

(b) submitting by any of the aggrieved person or the department that files the case or any of the relevant Government departments;

(c) submitting by the relevant Law Office due to information passed by any of the regional organizations;

(d) submitting after scrutiny by different levels of Law Offices;

(e) submitting by the relevant Law Office under instruction of the Office of the Attorney General.

2. Where the Law Officer desirous of submitting appeal against acquittal regarding an order of acquittal is the Township Law Officer, District Law Officer or State/ Divisional Law Officer, such officer shall complete form (B) attached herewith, then attach that document to the relevant proceeding, and together with the certified copy or copies of the judgement, of the relevant Court(s) submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving such certified copy of judgement.

3. Where the Law Officer who conducted this trial of the case desirous of submitting appeal against is not the Township Law Officer, District Law Officer or State/Divisional Law Officer, such Law Officer shall complete form (A), then attach that document to the relevant proceeding, and together with the certified copy or copies of the judgement(s) of the relevant Court(s) submit the proceeding within 7 days to his superior Township Law Officer, District Law Officer or State/Divisional Law Officer.

4. The Township Law Officer, district Law Officer or State/ Divisional Law Officer shall, on receiving the proceeding submitted under the above-mentioned paragraph 3, submit the same after filling his own appraisal and remark to the Office of the Attorney General within 15 days.

5. If any of the aggrieved person or the department that files the case or any of the Government department or organization is desirous of submitting to file an appeal against acquittal, the following shall be carried out: -

(a) within 30 days from the date of sentence for acquittal, application shall be submitted to the relevant Law Office.

(b) if it is that any of the aggrieved person submits application after 30 days, affidavit / oath-taking note shall be submitted attached thereto giving reasons for exceeding limitation. Where the application is submitted by the department that files the case or any of the Government department or organization after exceeding 30 days, sufficient reasons shall be mentioned in the application for exceeding the prescribed days.

(c) any of the aggrieved person shall stick court-fees of 5-kyat-stamp, on the application submitted to the Township Law Office and District Law Office. On the application submitted to the State / Divisional Law Office court-fees of 10-kyat-stamp shall be stuck.

(d) Together with the application, full address(es) of the respondent(s) and complete set of documents mentioned in the prescribed Annexure shall be attached thereto.

6. Since it is prescribed that appeal against acquittal shall be submitted within 6 months from the date of sentence for acquittal, with respect to submission of application to file an appeal against acquittal after passing 6-month period, the relevant Township Law Officer, District Law Officer or State / Divisional Law Officer shall carry out as follows: -

(a) if it is that application is submitted by any of the aggrieved person, the application shall not be accepted but return the same together with all the documents attached thereto after giving explanatory note attached thereto.

(b) if it is that application is submitted by the department that files the case or any of the Government department or organization, the application and all the documents attached there to shall be returned to the department or organization that has made application mentioning that application cannot be accepted due to passing of limitation and that if desirous of submitting application, it can be done so through the Head of that Department to the Office of the Attorney General.

7. The Township Law Officer, District Law Officer or the State / Divisional Law Officer who has received the submission under paragraph 5 shall carry out as following: -

(a) if it is the case that he has personally conducted, Form (1) shall be filled up and attached to the relevant proceeding and together with the documents of appendix (A) that he has already received, that proceeding shall be submitted to the Office of the Attorney General within 15 days from the date on which the application has been received.

(b) if it is not the case that he has personally conducted, Form (1) shall be filled up and attached to the relevant proceeding and the relevant Law Officer who has conducted the case shall be instructed to resubmit the same within 15 days.

(c) when the Law Officer who has conducted the trial of the case resubmits under the above sub-paragraph (b), his own appraisal and remark shall be filled up and the proceeding together with the documents of Appendix (A) shall be submitted to the Office of the attorney General within 15 days from the date of receiving the resubmission of the Law Officer who has conducted the case.

(d) if it is not the case that Law Officer has bot conducted, Form (1) shall be filled up, and attaching the documents of Appendix (A) shall be submitted to the Office of the Attorney General within 30 days from the date of receiving the application.

8. if any of the orgars of power on legal affairs informs the Law Office that appeal against acquittal should be filed in respect of the case that has been conducted by any of the Law Officers the Township Law Officer, District Law Officer or State / Divisional Law Officer shall abide by and carry out in accordance with the above paragraph (7), sub-paragraphs(a), (b)and (c).

9. If any of the regional organs of power assumes that appeal against acquittal should be submitted in respect of the case that Law Officer has not conducted, relevant Law Office shall be informed attached with the documents of Appendix(A) thereto and mentioning the full address(es) of the respondent(s). On receiving the information letter, the Township Law Officer, District Law Officer or State / Divisional Law Officer shall, after completing Form (1) and attaching the documents of Appendix (A), Submit to the Office of the Attorney General within thirty days from the date of receiving the information letter.

10. Concerning matters to which the Law Officer who conducted the trial of the case assumes that appeal against acquittal should not not filed regarding the case in which trial the Law Officer has conducted, the relevant Law Officer shall abide by and carry out as follows: -

(a) the Law Officer who conducted the trial of the case shall, after filling in the proceeding in full the reasons why appeal against acquittal should not be filed, submit to the relevant Township Law Officer, District Law Officer or State / Divisional Law Officer.

(b) the Township Law Officer, District Law Officer or State / Divisional Law Officer shall, on scrutinizing the proceeding submitted by the relevant Law Officer who conducted the trial of the case assumes that in his opinion appeal against acquittal should filed although the Law Officer who conducted the trial of the case gave remark that appeal against acquittal should not be filed, instruct to the relevant Law Officer who conducted the case to resubmit after filling Form(1) in full and to ask for the certified copy or copies of the judgement(s) of the Court(s).

(c) the Law Officer who conducted the trial of the case shall, after filing Form (1) in full and attaching the same in the proceeding thereto, resubmit the proceeding to the relevant Township Law Officer, District Law Officer or State/Divisional Law Officer within 7 days from the date of receiving the certified copy or copies of judgement(s) of the Court(s).

(d) on resubmitting as such, the Township Law Officer, District Law Officer or State / divisional Law Officer shall, after filling his own appraisal and remark in form (1) regarding appeal should be filed or not, submit such proceeding to the Office of the Attorney General together with the certified copy or copies of judgements(s) of the Court(s).

11. The Township Law Officer, District Law Officer of State / Divisional Law Officer -

(a) on scrutinizing the proceeding submitted by the relevant Law Officer who conducted the trial of the case finds that the remark - appeal against acquittal should not be filed - of the Law Officer who conducted the trial of the case is acceptable to him, he shall fill up his remark in full in the proceeding and the case shall be closed.

(b) decides that appeal against acquittal not be filed regarding the case that he personally conducted the trial of the case, his own remark shall be filled in the proceeding in full and the case shall be closed.

12. (a) if the District Law Officer or State / Divisional Law Officer assumes that, either by scrutinizing the case completion report submitted by the Township Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant Township Law Office shall be instructed to fill the Form (1) in full and to resubmit.

(b) The Township Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the relevant District Law Office within 15 days from the date of receiving the instruction.

(c) On receiving such resubmission, the District Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not and filling his own appraisal and remark in Form (1), submit the proceeding to the State / Divisional Law Office within 15 days from the date of receiving the submission.

(d) On receiving such resubmission, the State / Divisional Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not and filling his own appraisal and remark in Form (1), submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving the submission.

(e) The Prosecution Department of the Office of the Attorney General shall, it assumes that appeal should be filed after scrutinizing such proceeding, inform to the relevant Township Law Office to ask for and submit the certified copy of the judgement of the Court.

(f) The relevant Township Law Office shall, on receiving the certified copy of the judgement, submit the same to the Office of the Attorney General within 7 days.

13. (a) The State / Divisional Law Officer assumes that, either by scrutinizing the case completion report submitted by the District Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant District Law Office shall be instructed to fill the Form (1) in full and to resubmit.

(b) The District Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the relevant state / Divisional Law Office within 15 days from the date of receiving the instruction.

(c) On receiving such resubmission, the State / Divisional Law Officer shall, after scrutinizing whether appeal against acquittal should be filed or not filling his own appraisal and remark in Form (1), submit the proceeding to the Office of the Attorney General within 15 days from the date of receiving the submission.

(d) The Prosecution Department of the Office of the Attorney General shall, if it assumes that appeal should be filed after scrutinizing such proceeding, inform to the relevant Law Office(s) of the Court(s).

(e) The relevant Law Office(s) shall, on receiving the certified copy or copies of the judgement(s), submit the same to the Office of the Attorney General with 7 days.

14. (a) The Prosecution Department of the Office of the Attorney General assumes that either by scrutinizing the

case completion report submitted by Law Offices or by any means of information, it is necessary to scrutinize whether appeal against acquittal should be filed or not, relevant Law Office shall be instructed to fill the Form (1) in full and to resubmit together with the certified copy or copies of the judgement(s) of the Court(s).

(b) The Law Office that received such instruction shall, after filling up Form (1) in full and attaching the same in the relevant proceeding thereto, submit the proceeding to the Office of the Attorney General within 15 days from the date of the relevant Court(s).

(c) In the matter instructed by the Office of the Attorney General as such, it shall be carried out according to the instruction of the Office of the Attorney General as mentioned in the above paragraph though the State / Divisional Law Office or District Law Office instructs in the same manner. It shall be resubmitted to the upper level Law Office(s) informing such matter has already been carried out.

15. Regarding appeal / revision, if it is discharging to file appeal against acquittal on the order passed by the State / Divisional Court, the State / Divisional Law Office or District Law Office shall carry out the necessities prescribed under this Directive, also ask for the proceeding of the relevant Township Law Office and send to the Office of the Attorney General. Special consideration shall be given the proceeding of the Township Law Office.

16. In filing application to avail certified copy or copies of the relevant Court(s) to file appeal against acquittal, application shall be filled to the relevant Court(s) within 7 days from the date of passing the sentence or from the date of receiving information letter to file the appeal.

17. The Law Officers shall, in compiling Form (1), compile two sets and one set shall be attached to the proceeding of the relevant Law Office and shall send the same to the relevant Law Office or Office of the Attorney General in accordance with this Directive the remaining one set shall be kept as office copy. The copy of submission letter with which the proceeding has been sent as such shall be sent to the relevant upper - level Law Offices.

18. On receiving the submission after scrutiny regarding appeal against acquittal should be filed or not by the Office Of

the Attorney General, the Prosecution Department of the Office of the Attorney General shall fill up Form(2) attached herewith in full and submit the same to the Deputy Attorney General according to the office procedure.

19. If it is assumed that appeal against acquittal should be filed regarding the original case the trial of which is conducted by the Law Officers of the Office of the Attorney General, the Law Officer who conducted the trial of the case shall, after filling up Form(1) in full and availing the certified copy of relevant Court, submit the same to the Director of the Prosecution Department of the Office of the Attorney General within 15 days from the date of receiving such certified copy of judgement. The Prosecution Department of the Office of the Attorney General shall, after filling up in Form(2) in full, submit the same to the Deputy Attorney General according to the office procedure.

20. If it is assumed that the order of acquittal in appeal/ revision cases heard by the Supreme Court should be filed special appeal to enable re-scrutiny and to pass judgement by Full Bench of the Supreme Court under section 6 of the Judiciary Law, the Law Officer who conducted the case shall, after writing his own appraisal and remark in full, submit the same to the Deputy Attorney General together with the relevant proceeding(s) in accordance with the office procedure.

21. (a) If any of aggrieved person is desirous of filing special appeal so as to enable re-scrutiny and to pass judgement by Full Bench of the Supreme Court under section 6 of the Judiciary Law regarding the acquittal order of the Supreme Court, application shall be submitted to the Office of the Attorney General within 30 days from the date of passing acquittal order together with the documents mentioned in Appendix (A) thereto.

(b) In applying so, the full addresses of the applicant and respondent(s) shall be mentioned and court-fees of 15-kyat-stamp, shall also be stuck. Regarding the matter that application is filed after 30 days, affidavit /oath-taking note shall also be attached thereto.

(c) Regarding the application submitted after 6 months from the date of passing acquittal order, the Office of the Attorney General shall, after giving explanation that limitation and all documents attached thereto or return giving explanation as such.

22. If any of the department that files the case or relevant Government department or organization assumes that appeal shall be filed to enable re-scrutiny and to pass judgement by the Supreme Court under section 6 of the Judiciary Law regarding acquittal order of the Supreme Court, submission shall be filed to the Office of the Attorney General reasons.

23. When the submission under the above- mentioned paragraphs 21 and 22 is received by the office of the Attorney General, the Prosecution Department of the office of the Attorney General shall, after writing appraisal and remark whether or not special appeal should be filed or not in full, submit to the Deputy Attorney General in accordance with the office procedure with the relevant proceeding attached thereto.

24. Regarding submission after scrutiny by different levels whether or not appeal against acquittal or special appeal should be filed, the decision shall be made by the Deputy Attorney General. If the Deputy Attorney General decides appeal or special appeal should be filed, the Prosecution Department of the Office of the Attorney General shall carry out continuously to file appeal or special appeal to the Supreme Court during the limitation. If it is decided that appeal or special appeal should not be filed, the case shall be closed.

25. The Prosecution Department of the Office of the Attorney General shall inform the decision of the Office of the Attorney General to the relevant Law Office(s) and the Government department, organization or person that has filed application. The relevant proceeding(s) shall be returned to relevant Law Offices(s) when the Office of the Attorney General decides appeal should not be filed or decision has been made by the Court after appeal is filed by the Office of the Attorney General.

26. If it is found that submission has not seen filed though appeal or special appeal should be filed or failing to abide by this Directive, the relevant Law Officer having responsibility will be taken effective action.

MATTER TO BE CONDUCTED BY LAW OFFICERS IN CRIMINAL REVISIONS/APPEAL

810. Regarding the matter to be conducted by Law Officers in criminal revisions/appeals, the Office of the Attorney General (Formerly the Central Law Office) issued a Directive dated 16th September, 1974. In that Directive, regarding the matter to be conducted by law Officers the following directives are issued.

Criminal Revision

1. Regarding Criminal revision, there are roughly three classes of cases : -

- (a) cases in which Government applies for revisions;
- (b) cases filed by relevant persons or outsider aggrieved persons due to dissatisfaction (1) enhancement (2) reduction, (3) alteration, or (4) setting aside of sentences ;
- (c) cases in which a convicted person applies for revision , after the appeal allowed him by law has failed or where no appeal is allowed by law.

2. Regarding documents for cases mentioned in above paragraph 1(a), the Law Officers shall file the application for revision by the instruction of the Councils, Besides, application for permission to be heard under section 440, of the Code of Criminal Procedure shall also be filed of the Court.

Regarding the classes of cases mentioned in sub-paragraphs (b) and (c) of paragraph (1), if the case is important, the relevant Court shall send a notice information that the Law Officer is obliged to conduct in the hearing of that case. If the notice of the Court information that the Law Officer is obliged to conduct as such., the Law Officer shall conduct in such cases.

Regarding the criminal revisions, the provisions of section 440 of the Code of Criminal Procedure should also be taken into account.

3. If the matter arises to file revision regarding criminal cases in which Law Officers conducted, and if that revision needs to be filed at the State/Divisional Court, the relevant Law Office, carry out under the permission of the State/ Divisional Law Office. If the revision needs to be filed at the Supreme Court, the relevant Law Officer shall submit the matter to the Office of the Attorney General through the State / Divisional Law Office information application for revision should be filed.

In criminal appeals in which the Government is involved either as appellant or respondent, the Law Officer shall conduct on behalf of the Government.

**DIRECTIVE REGARDING REQUEST FOR PERMISSION
TO CONDUCT AS PROSECUTING LAWYER
IN CRIMINAL CASES**

811. The Attorney General, in exercise of the power conferred on him under sub-section(d) of section 4 of the Attorney General's Law, issued the Directive No.1/99 dated 21st January, 1999 regarding request for permission to conduct as prosecuting lawyer in criminal cases. In that Directive :-

1. The Law Officers who are obliged to conduct in criminal original cases, appeals, revisions and general applications in which the Government is involved shall take responsibility and carry out according to the provisions of section 493 of the Code of Criminal Procedure and section 4(a) of the Attorney General's Law.

2. In any of the trial of cases or appeals to which the Law Officers have to take responsibility, if the aggrieved person is desirous of hiring outside lawyer and granting him permission to conduct as prosecuting lawyer, the following shall be abided by and carried out :-

- (a) application shall be filed to the Law Office in which the Law Officer who is conducting the relevant criminal offence has been serving.
- (b) Power of Attorney that the outsider lawyer will submit to the relevant Court shall be attached to the application.
- (c) if application is filed to the Township Law Office or District Law Office, 5-kyat - stamp shall be stuck on the application.
- (d) if application is field to the State / Divisional Law Office, 10-kyat- stamp shall be stuck on the application.
- (e) if application is filed to the Office of the Attorney General, 15-kyat- stamp shall be stuck on the application.

3. The different levels of Law Offices which have received the application filed under above-mentioned paragraph 2 shall abide by and carry out as follows : -

- (a) if it is the Township Law Office to which application is filed regarding whether or not hired outside lawyer be permitted to conduct as prosecuting lawyer, if it is the District Law Office, by the District Law Officer, if it is the State / Divisional Law Office by the State/Division Law Officer, if it is the Office of the Attorney General by the Director of the Prosecution Department of the Office of the Attorney General.
- (b) if it is decided that permission should not be granted, the Power of Attorney that has been attached to the application shall be given back or returned to the applicant giving reasons why permission it not granted.
- (c) if it is decided that permission should be granted, it shall be written on the document of Power of Attorney addressing to the relevant Court the expression "Permission is hereby granted to assist the Law of Officer who conducts trial of the criminal case only" in its exactness that Power of Attorney and shall be given back or returned to the applicant to enable for submitting to the relevant Court.

4. In the sort of case whether cognizable or non-cognizable offence, due to direct complaint is filed at the Court, where the Court, on making inquiry under section 200 of the Code of Criminal Procedure, decides to take action as cognizable offence and where notice is served in writing by the Court to enable the Law Officer to conduct in the trial of that case, and where the aggrieved person is desirous of hiring outside lawyer and granting him to conduct as prosecuting officer, it shall be abided by and carried out as prescribed in the above paragraphs 2 and 3.

5. The outside layer who is granted permission to conduct as the prosecuting lawyer regarding cases in which trial the Law Officer is responsible to conduct, shall abide by and carry out the following : -

- (a) it shall be accepted that he has to assist only the relevant Law Officer.

- (b) the relevant matters of the cases that he is desirous of submitting to the Court including the matters that he is desirous of examining the witnesses shall be submitted to the Law Officers who conducts the trial of the case in writing.
 - (c) without having permission of the Law Officer who conducts the trial of the case, examination of the witnesses at the Court, submission of exhibits, presenting facts to the Court, cross - examination and giving argument shall not be conducted.
 - (d) if the Law Officer who conducts the trial of the case grants permission, examination of witnesses at the Court, submission of exhibits, presenting facts to the Court, cross-examination and giving argument shall be conducted within the framework of permission.
6. The Law Officer who is responsible and conducts the case to which the outside lawyer has been granted permission to conduct as the prosecuting officer shall abide by and carry out the following :-
- (a) when the relevant case is heard, the responsible Law Officer who conducts the trial of the case shall personally leads and conducts.
 - (b) it shall be accepted that the outside Lawyer conducts to assist him only.
 - (c) if the outside lawyer submits to him in writing regarding the matters that he is desirous of examining the witnesses, the matters that he is desirous of submitting to the Court and cross questions, they shall be filed properly at the relevant case file of documents.
 - (d) if the matters that are submitted by the outside lawyer are found to be worthy leading to truth when closely assertiveness, the examination of witnesses, presenting facts to the Court, cross - examination shall be conducted. If the matters are assumed to be unworthy leading to fall through, the suggestion made by the outside lawyer may be rejected.
 - (e) If the Law Officer who conducts the trial of the case assumes that considering the circumstances and process of the said case, his own functions and duties may not be affected shall grant permission regarding part of his functions and duties or a certain duty to be performed by the outside lawyer in assistance.

- (f) when the Law Officer who conducts the trial of the case grants permission under sub-paragraph(e), part of his functions and duties or a certain duty that he has granted permission shall be mentioned reducing to writing. Such granting of permission shall be exactly recorded in the case file of documents.
- (g) if permission is granted as such, the outside lawyer shall be permitted to study the police papers to the extent to which he has been permitted during the office hours. It shall be taken care that the outside lawyer shall not be permitted to study the statements of the witnesses contained in the police papers to more than the extent to which he has been permitted.
- (h) though the outside lawyer is granted permission to assist him in the case that he conducts under sub-paragraph (e), special care shall be taken that the duty of prosecution of the Law Officer who conducts the trial of the case will not be lessened.

7. If the outside lawyer who is conducting the case is found during the process of hearing the case conducting not in the rightful means at any stage of the process, the reason that such person should not be permitted to continue conducting the case shall be recorded sufficiently, and the Law Officer who initially has granted permission shall submit to the relevant Court in that case.

8. If it is sufficiently found that the outside lawyer who has been granted permission to conduct as the prosecuting officer has conducted without abiding by the instructions contained in this Directive or has conducted in one way or another so as not to enable for disclosing the truth on the case he has been granted permission to conduct, action shall be taken against him under the existing laws, rules and regulations.

9. If it is sufficiently found that the Law Officer who conducts the trial of the case has conducted without abiding by the instructions contained in this Directive or mismanaged unjustly in conducting the said case, action shall be taken against him under the existing laws, rules and regulations.

CHAPTER XXVII

PROCEDURE UNDER SPECIAL ENACTMENTS.

1. Police Act.

43 **812.** Subordinate Magistrates should not institute cases against Police Officers under section 43 without obtaining the Prosecution of Police Officers. **Previous sanction** of the District Magistrate. If a Subordinate Magistrate is of opinion that a Police Officer should be prosecuted under section 43, he should submit a report of the facts to the District Magistrate, who, after consulting the District Superintendent of Police, will sanction or decline to sanction the prosecutions as he sees fit.

813. Whenever a complaint is made against a police officer for which no sanction is required the Magistrate should make a report to the District Magistrate, in order that the District Magistrate may, if he thinks fit, take action under paragraph 222 (4) of the Burma Police Manual, 5th Edition, 1940.

Intimation will be given by the District Magistrate to the Superintendent of Police in all cases in which the prosecution of a police officer for an offence, other than an offence under section 43 of the Police Act, is instituted on complaint or by a Magistrate *suo motu*.

814. The above orders do not apply in cases in which Union military policemen are tried by Commandants or officers officiating in such appointments for offences triable by them.

815. Section 50 provides for the method of recovery of money payable under sections 23, 24, 25 and 26.

Recovery of moneys
and imprisonment in
default of fine.

Though the provisions of sections 64 to 70 of the Penal Code (both inclusive) are applicable to the offences under the Police Act, the operation of section 63 of the Penal Code is modified by the proviso to section 47, which allows imprisonment in default of fine to extend up to 8 days, the maximum provided in section 47.

20,21,22,47.

816. (1) The attention of all Magistrates is drawn to the orders in paragraphs 1044, 1237-1243 and 1604, of the Burma Police Manual, 5th Edition, prescribing the procedure to be adopted with regard to the reporting of the seizure or possession of property

Disposal of Property
seized by Police.

by the Police under sections 51, 53, 523 and 550, Code of Criminal Procedure, to a Magistrate. It has been observed that the Police are apt to detain property seized under these sections for indefinite periods, owing to the loose manner in which many Magistrates pass orders. If the Magistrate does not pass an order for the immediate return of the property to its owner, the Police must send in a list in Form Criminal 27 and the Magistrate must open out a Miscellaneous case and enter it in Register II, Criminal. If when the Police report in Form Criminal 27 is submitted to him, the Magistrate passes orders for the property to be returned to its owner or detained during further inquiry by the Police he need not, unless the special circumstances of the case require it, open a miscellaneous proceeding in his Court, but in the event of his passing an order of detention must fix a definite date, not generally more than 7 days ahead, by which the Police must submit a further report of the action taken. If he passes orders for the disposal of the property in any other way, *e.g.*, by proclamation or sale, he must straightaway open a miscellaneous case, and enter it in his Criminal Register No. II.

(2) Section 523 of the Code of Criminal Procedure prescribes the procedure to be followed by the Police upon seizure of property taken under section 51 of the Code or stolen.

When a Magistrate is dealing with property under this section imposes any conditions such as the execution of a bond it is his duty, and not the duty of the Police, to fix, the amount for which the bond is to be executed and the terms of the bond, including the amount of the stamp to be affixed to the bond, who is to supply the stamp, and how the bond is to be executed. In such a case, however, a Court-fee stamp is required, which is to be supplied by the party who is ordered to execute the bond. It is advisable to have two attesting witnesses to the bond.

Where property is ordered to be delivered without conditions the order of the Magistrate should state specifically that no conditions are imposed.

2. Arms Act.

19. 817. A Magistrate of the second or third class is not empowered to try an offender under section 19 of the Arms Act.

Jurisdiction.

818. The definition of "arms" contained in section 4 should be carefully noted. For the purposes of section 13 "Arm" and "going only certain other kinds of knives have been armed" declared to be 'arms' by the last clause of section

13. The effect of this provision is that a person commits the offence of "going armed" under section 19 (e) if he goes armed without a license with a knife with a pointed blade rigidly affixed, or capable of being rigidly affixed, to the handle, and measuring in all over five inches in length, even though such knife is intended exclusively for domestic, agricultural or industrial purposes.

819. A Magistrate of the first class who is not specially-empowered under section 30 of the Code of Criminal Procedure cannot try an offender under section 19A of the Arms Act. *See* section 2 of the Arms (Temporary Amendment) Act No. LI of 1951.

3. Opium Act. ❖

820. to 824.	x	x	x	x	x	x
x x x	x	x	x	x	x	x

❖ The State Law and Order Restoration Council Law No. 1/1992 repealed The opium Act.

4. Railways Act.

133. 825. A Magistrate of the second or third class cannot try any offence under the Railways Act.

Subject to the above provision offences are triable according to the rules contained in Schedule II of the Code of Criminal Procedure, under the head ' Offences against other laws. ' Thus, offences under sections 126 and 127 are triable only by the Court of Session, or District Magistrate or other Magistrate exercising special powers under section 30 of the Code of Criminal Procedure. Offences under the Railways Act should ordinarily be tried by a Stipendiary Magistrate and not by Honorary Magistrates.

115. 826. (1) Attention is invited to section 115. Fines imposed under sections 112 and 114 and recovered shall not be credited to Government until the portion of the fine due to the Railway is paid. The total amount should however be made over to the Bailiff and entered at once in his Register II. Railway official authorized by the Station Master shall at headquarters as often as it is thought desirable draw the amounts due and shall acknowledge receipt in column 14 of that Register.

(2) When the amount due has to be sent to a station not at the headquarters of the District, Subdivision or Township, the money due shall be sent once a week by money order or Remittance Transfer Receipt to the Station Master who shall acknowledge receipt. A note shall be made on the money order or on a slip of paper attached to the Remittance Transfer Receipt of the particulars of the account on which the money had been recovered. The receipt of the Station Master shall be filed in the " Receipt " file of the Court concerned and a note shall be made on the diary sheet of each case of the fact that the amount due to the Railway has been sent and acknowledged. So too when money is paid direct to an authorized official the amount paid and the date of acknowledgment of receipt shall be noted in the diary. After the amount due to the Railway Administration has been paid, the surplus, if any, should be at once transferred to Bailiff's Register No. I and credited to Government.

827. Attention is invited to sections 106, 112, 114, 116, 131, 132 and 133 as amended by the Railways (Amendment Act) No. LXXII of 1954.

828. It is desirable that a Magistrate making an enquiry into a Railway accident should, before bringing to trial any person whom he may consider to be criminally liable for the accident, take the evidence or the opinion of the Government Inspector of Railways on any technical points involved, under Rule 24 of the Rules contained in Railway Department Notification No. 1926T, dated the 19th March 1930. Rules 22–27 of these rules, relating to the duties of Magistrates with regard to accidents such as described in section 83 of the Railway Act, are reproduced below :—

Duties of Magistrates
in connection with
Railway accidents.

Duties of Magistrates.

22. Whenever an accident, such as is described in section 83 of the Act, has occurred in the course of working a railway, the District Magistrate, or any other Magistrate, who may be appointed in this behalf by the President of the Union, may either—

- (a) himself make an enquiry into the causes which led to the accident ; or
- (b) depute a subordinate Magistrate, who if possible, should be a Magistrate of the first class to make such an enquiry; or
- (c) direct an investigation into the causes which led to the accident to be made by the police.

23. Whenever it is decided to make an enquiry under clause (a) or clause (b) of Rule 22, the District Magistrate or other Magistrate appointed as aforesaid or the Magistrate deputed under clause (b) of Rule 22, as the case may be, shall proceed to the scene of the accident and conduct the enquiry there, and shall at once advise the General Manager and the Government Inspector by telegraph of the date and hour at which the enquiry will commence, so as to enable the railway administration to summon the requisite expert evidence.

24. A Magistrate, making an enquiry under Rule 22, may summon any railway servant, and any other person whose presence he may think necessary, and, after taking the evidence and completing the enquiry, shall, if he considers there are sufficient grounds for a judicial enquiry, take the requisite steps for bringing to trial any person whom he may consider to be criminally liable for the accident. Whenever technical points are involved the Magistrate should call for the opinion of the Government Inspector or professional persons.

25. The result of every enquiry or investigation made under Rule 22 shall be communicated by the Magistrate to the General Manager and to the Government Inspector.

26. If, in the course of any judicial enquiry, into an accident occurring in the course of working a railway, the Magistrate desires the assistance of the Government Inspector or of the General Manager, or the attendance of any officer of the railway, to explain any matter relating to railway supervision, management or working he will issue a requisition to the General Manager for the attendance at Court of an officer competent to explain such matter, stating at the same time the nature of the assistance required. In summoning railway servants, the Magistrate will take care not to summon so large a number of the employees, specially of one class, on the same day, as to cause inconvenience to the working of the railway. In the case of very serious accidents it will generally be advisable for the Magistrate to obtain a report, from both the Government Inspector and the General Manager, in regard to the accident, before finally concluding the judicial enquiry.

27. On the conclusion of any such judicial enquiry the Magistrate shall send a copy of his decision to the General Manager, and to the Government Inspector, and shall, unless in any case he thinks it unnecessary to do so, report the result of the enquiry to the President of the Union.

5. Gambling Act *

829. to 836.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No. 6.1986 ; Gambling Law)

6. Forest Act †

837. to 840.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No.8.1992; Forest Law)

* Law No.6. 1986, Gambling Law " Appendix VI ↵

† Law No.8. 1992, Forest Law " Appendix VII ↵

7. Village Act.

- 7 **841.** The provisions of section 45 of the Code Criminal Procedure
 Duties of Headmen in are replaced in the Union of Burma by the
 regard to crime. provisions of section 7 of the Village Act.
28. **842.** Magistrates are prohibited by section 28 of the Act from
 Sanction to prosec- entertaining complaints against headmen of village-
 tion tracts, members of village committees and rural
 policemen (*e.g.*, *Ywagaungs*) in respect of acts
 or omissions punishable under the Act, unless the prosecution is instituted
 by order of the Deputy Commissioner. This prohibition applies to acts
 and omissions which constitute offence under the Penal Code if such
 acts or omissions are also punishable under the Village Act.
- 9(2)(e). **843.** For cases which have been declared by the President of the
 Cases triable by Union under the provisions of sub-section (2),
 Village Committees. clause (e) of section 9 of the Village Act, to be
 triable by Village Committees, *see* the
 notifications on page 25, Village Manual.

8. Lunacy Act.

(*For procedure in regard to Criminal Lunatics, vide paragraphs*
 502–509 ante.)

844. All first class Magistrates have been empowered under clause
 Jurisdiction of (6) of section 3 to perform the functions of a
 Magistrates. Magistrate under the Act.* But it is not desirable
 that all first class Magistrates should ordinarily
 perform these functions and therefore the District Magistrate shall by
 standing order designate for every township, subdivisional or district
 headquarters the first class Magistrate who shall ordinarily carry out the
 duties of a Magistrate under the Act :

Provided that at the headquarters of a district or subdivision such
 Magistrate shall be the Subdivisional Magistrate when present at
 headquarters.

* Judicial Department Notification No. 59, dated the 5th May 1913.

845. The maximum period of detention of non-criminal lunatics for observation as to their state of mind is fixed by section 16 of the Lunacy Act at thirty days only.

Period of detention of non-criminal Lunatics for Observation.

846. The attention of Magistrates is invited to the orders requiring that asylums or mental hospitals should be reversed only for criminal lunatics, lunatics who are absolutely dangerous and those who, having no friends or belongings, may be in the acute stage in which there is most hope of recovery from medical treatment, *e.g.*, toxic cases as the result of alcohol, ganja and cocaine habits, malaria, typhoid, etc. It is unnecessary and unwise to go to the extent of admitting into Government asylums or mental hospitals and maintaining at the public expense all the insanes who are presented for admission. Persons suffering from the temporary results of intemperance or debauchery, harmless mental defectives, wandering vagrants and those whom their friends ought to support should be kept out of public asylums or mental hospitals. These principles should be borne in mind by Magistrates in dealing with persons brought before them under the Lunacy Act. †

Admission into Asylum.

847. Magistrates are requested to collect and forward to the Medical Superintendent, Mental Hospital, Tadagale, as much information as possible concerning the previous history and the cause of the insanity of every civil lunatic whom they may send there.

History of Civil Lunatics.

The attention of Magistrates is invited to the Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940 and to the need for strictly observing the orders contained therein regarding the admission of civil lunatics into the Mental Hospital, Tadagale.

† Department of Health and Public Works (Medical Branch) 'G' Circular No. 7 of 1940, dated 11th March 1940.

- 7 or 10. 848. A Magistrate may not authorize the admission of the lunatic under section 7 or 10 into an Asylum of Mental Hospital situate outside Burma except under and in accordance with any general or special order of the President of the Union made in this behalf under section 85 * (*c.f.* paragraph 852).
85. Reception Order on petition.

849. The form of medical history sheet prescribed by Judicial Department Notification No. 63, dated the 5th May 1913, shall be used in all cases in which –

- (i) a Magistrate (sections 14 and 15 of the Lunacy Act) or District Court (section 25 of the Lunacy Act) orders a lunatic to be received into a mental hospital ;
- (ii) a Magistrate or Court orders a criminal lunatic to be kept in safe custody in a mental hospital, under section 466 (2), or section 471 (1) of the Code of Criminal Procedure ; or
- (iii) the orders of Government are applied for under section 30 (1) of the Prisoners' Act.

The Medical Superintendent of the mental hospital may ask the Committing Officer to make further enquiry upon any point regarding which the information given in the medical history sheet is obscure or obviously incorrect, and, the Committing Officer shall thereupon take such further evidence as might be available and forward the record of his proceedings to the Medical Superintendent of the Mental Hospital. †

- 7, 10, 14 or 15. 850. A Magistrate making a reception order under section 7, 10, 14 or 15 shall, in the case of a lunatic domiciled in Burma, enquire into and declare the district Councils, Municipalities, Notified Areas, Deputy Commissioners' Local Funds, Hill Tracts Local Funds or Civil Stations not included in Municipalities, in the Jurisdictions of which the lunatic has resided for a period of not less than six months out of the year immediately preceding the date of commencement of the proceedings under the Act.
- Inquiry as to residence of Lunatic and payment of cost of maintenance.

* Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

† Judicial Department Circular No. 13 of 1924

If the lunatic has not so resided in the area of a single Local Body, the Magistrate shall enquire into and declare the areas of the various Local Bodies in which the lunatic has resided during the six months immediately preceding the date of commencement of the proceedings and the period of residence in each such area. He shall see that the required entries are made in the medical history sheet in the prescribed form or are communicated as soon as possible to the Superintendent of the Asylum or Mental Hospital. If the Magistrate is unable to make such a declaration he shall record the reasons for his inability to do so.

A Court making an order under section 25 or 26 shall, if the lunatic has not sufficient property for his maintenance in the Asylum or Mental Hospital and if no person legally bound to maintain such lunatic has sufficient means for payment of the cost of maintenance of the lunatic in the Asylum or Mental Hospital, make a similar enquiry and declaration.†

7, 10, 14 or 15. **851.** When a Magistrate makes a reception order under section 7, 10, 14 or 15 of the Lunacy Act, he should send a copy of such order together with the copy of the order or classification made after holding the enquiry envisaged in paragraph 850, read with paragraph 855, at once to the Local Bodies concerned in order to give them early intimation of their financial liability in the matter.

Maintenance of
pauper lunatics.

852. As soon as it is known that a lunatic, who has been admitted to an Asylum or Mental Hospital in Burma is domiciled elsewhere than in Burma, in fact (with details of the case) should be brought to the notice of the President of the Union if the Superintendent of the Asylum or Mental Hospital and the Director of Medical and Health Services, Burma, consider that action should be taken for the removal of the lunatic, under section 35, to India or Pakistan (*c.f.* paragraph 848).

Report to Govern-
ment in case of luna-
tics domiciled else-
where than in Burma.

† Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

853. In the case of non-criminal lunatics dealt with under section 14 and 15 of the Lunacy Act, the Magistrate ordering their reception in the asylum is responsible for their proper despatch. The following statutory rules* have been issued under section 91 (1) (f) of the Act :—

Despatch of
Lunatics.

Rules.

(1) When a Magistrate has made an order under section 14 or section 15 of the Act for the detention of a civil lunatic in a asylum, he shall arrange, in communication with the police, for the despatch of the lunatic with the suitable escort. The reception order, the medical history sheet † in the prescribed form (duly countersigned), the evidence of the medical witness, if taken, and any other papers that may be necessary and that may have a bearing on the insanity of the lunatic shall be forwarder to the Superintendent of the Lunatic Asylum by registered post. A duplicate of the reception order and of the medical history sheet must be given to the escort accompanying the lunatic. If for any reason the lunatic is unable to start at once for the asylum, he shall be sent to the jail for such detention as may be necessary. The order under section 14 or 15 is sufficient warrant for such detention.

(2) No lunatic shall be despatched to the asylum unless a medical officer certifies immediately before despatch that he is fit to travel ; the original of such certificate shall be sent to the Superintendent of the Lunatic Asylum by post.

(3) The Magistrate shall satisfy himself that the lunatic is provided with sufficient clothing and bedding for his protection and comfort during the journey. He shall provide the escort with sufficient means to purchase such food as the lunatic is likely to require on the journey, and shall instruct the officer in charge to take the lunatic to the nearest hospital for treatment in event of his showing signs of sickness.

* Judicial Department Notification No. 68, dated the 5th May 1913, as amended by General Department Notification No. 507, dated the 30th December 1922.

† Form (Medical).
L.A. 3

- (4) A female lunatic shall always be accompanied by a female attendant or relative in addition to the police escort.

854. Any expenditure incurred by Magistrates in carrying out the provisions of paragraph 853 by purchase of clothing or provision of travelling expenses (including those of the female attendant or relative sent as escort) shall be treated as Criminal Courts contingent expenditure :—

Cost of Despatch to Asylum.

Provided that—

- (1) where the cost of maintenance of a lunatic is recoverable from Municipal or Town Funds, such cost should be paid from such fund in the first instance ;
- (2) where an order has been passed by a Civil Court under Chapter V of the Act for the reception of a lunatic in an asylum, the guardian or relative obtaining such order is responsible for his transmission to the asylum.

855. (a) With reference to liability of the local authorities to pay for pauper lunatics, the President of the Union is pleased to direct that the words 'sent to public asylums from the municipality' in section 87, subsection (1), clause (c) of the Municipal Act, 'sent to public asylums from the area under authority of the District Council' in section 36, clause (c) of the Rural Self-Government Act, 'sent to public asylums from City' in section 25 (XXV) of the City of Rangoon Municipal Act, and 'sent from Cantonment to public lunatic asylums and mental hospitals' in clause (d) of the second proviso to section 109 of the Cantonment Act, shall be held to apply to the following classes of lunatics:—

Maintenance charges of Lunatics.

- (i) lunatics admitted to an asylum or mental hospital under a reception order made under section 7, 10, 14 or 15 of the Lunacy Act, for the payment of cost of whose maintenance no engagement has been taken from the friends or relatives ;
- (ii) lunatics admitted to an asylum or mental hospital under section 25 or dealt with under section 26 of the Lunacy Act, who have not sufficient properties for their maintenance in the asylum or mental hospital and no persons legally bound to maintain such lunatics have sufficient means for payment of the cost of maintenance of the lunatics and asylum or mental hospital.

(b) The cost of maintenance of such lunatics in the asylum or mental hospital shall ordinarily be payable by the Local Authority or Cantonment Authority concerned on the basis of residence for a period of not less than six months out of the year immediately preceding the date of commencement of the Proceedings under the Lunacy Act. If a lunatic has not resided in the area of a single Local Authority or Cantonment Authority for a minimum period of six months out of the year immediately preceding the commencement of the Proceedings, the cost of maintenance will be payable in proportion by Local Authorities or Cantonment Authorities concerned in whose areas the lunatic has resided during the six months immediately preceding the date of commencement of the Proceedings under the Lunacy Act.

(c) Magistrates and Courts are required under the Rules contained in the Public Health Department (Ministry of Education) Notification No.90, dated the 15th August 1933, to make strict enquiry as to the domicile of lunatics.

In sending a lunatic to the asylum or mental hospital, the Magistrate or the Court shall, if possible, expressly state in the order the Local Authority or Cantonment Authority in whose areas the lunatic has resided for a period of not less than six months out of the year immediately preceding the date of commencement of the Proceedings under the Lunacy Act after affording the Local Authorities or Cantonment Authorities concerned the opportunity of adducing evidence to show that the lunatic has not so resided. If the lunatic has not so resided in the area of a single Local Authority or Cantonment Authority the Magistrate or the Court shall enquired into and determine the areas of the various Local Authorities or Cantonment Authorities in which the lunatic has resided during the six months immediately preceding the date of commencement of the Proceedings and the period of residence in each such area after affording the Local Authorities or Cantonment Authorities concerned the opportunity of adducing evidence to show that the lunatic has not so resided. The Medical Superintendent of the asylum or mental hospital will then have no difficulty in deciding which Local Authority or Authorities or Cantonment Authority or Authorities should be called upon to pay for the cost of maintenance of the lunatic. If in any case the Magistrate or the Court is unable to arrive at a finding about a lunatic's place of residence, the fact shall be stated in the order.

(d) The decision as to the residence of the lunatic recorded by the Magistrate making the reception order or by the Court making the order under section 25 or 26 of the Lunacy Act, shall be final ; provided that if the Magistrate or the Court is unable to make a decision as to the residence of the lunatic, the Medical Superintendent of the mental hospital shall refer the question to the Commissioner of the Division in which the lunatic is known to have resided during the year immediately preceding the commencement of the Proceedings under the Act. The Commissioner may cause, such further enquiries to be made as he may think fit, and may order that the cost of maintenance of the lunatics shall be paid by any local authority or authorities within his jurisdiction, in such proportions as may seem to him to be equitable. If the Commissioner considers that a portion of such cost should be borne by any local authority outside his jurisdiction, he shall refer the matter to the other Commissioners concerned. If the Commissioners are not in agreement the case should be referred for the orders of the President of the Union.

The President of the Union in cases referred to him may order that the cost of maintenance shall be paid by any Local Authority or Authorities or Cantonment Authority or Authorities. *

33. 856. When a lunatic is detained under the Lunacy Act, and the case is brought before the Magistrate under section 33 of that Act, the Superintendent of the Asylum shall furnish in writing all the details required by the form in paragraph 885 for the information of the said Magistrate, together with his own opinion of the safety of releasing the lunatic.

Discharge of
Lunatics.

In the event of the lunatic having at any time exhibited a tendency to violence the Magistrate shall satisfy himself that a sufficient length of time has elapsed since such manifestation to render a recurrence improbable, and that the sureties are in a position to control the actions of the lunatic should it recur. †

* Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940.

† Judicial Department Notification No. 65, dated the 5th May 1913.

857. Re-admission into the mental hospital of ex-criminal lunatics who have been of discharged from the mental hospital on security and made over to the care of friends requires the sanction of the President of the Union. On orders being passed the original warrant may be held to revive.†

858. The following form of Medical History Sheet of Lunatics must invariably be used—‡

MEDICAL HISTORY SHEET OF LUNATICS
(FORM $\frac{\text{MEDICAL}}{\text{L.A. 3.}}$)

Note— (1) The ultimate responsibility for the preparation of this form rests with the Committing Officer, who must see that the requisite information is supplied by the police and the Medical Officer without undue delay.

(2) If any of the particulars in this statement are not known, the fact should be stated.

A.—QUESTIONS TO BE ANSWERED BY THE POLICE.

Part I.—General.

1. (a) Name of patient in full.
- (b) Age of patient.
- (c) Sex of patient.
- (d) Caste, race or creed of patient.
- (e) Place of birth of patient—Village, Town, District.
- (f) Recent place of abode—Street, Quarter, Town.
- (g) Length of stay at recent place of abode.
2. Names of patient's father and mother.
3. Marks whereby the patient may be identified

† Department of Health and Public Works (Medical Branch), 'G' Circular No. 7 of 1940, dated the 11th March 1940.

‡ Judicial Department Notification No. 31, dated the 4th April 1918, as amended by Public Health Department (Ministry of Education) Notification No. 90, dated the 15th August 1933.

4. Condition or mode of life, previous occupation (if any) and temperament.
5. Married or single or widowed.
6. (a) Whether homeless or living with relatives or friends.
 (b) Full address of relatives or friends, if any.
 (c) Names and addresses of relatives or other persons who are legally bound to maintain the patient.
 (d) Whether they are able and willing to take charge of the patient;
 or
 (e) whether they are able and willing to bear the cost of his maintenance at the Asylum.
 (f) If not, give reasons for their inability or unwillingness.
7. Religion.

Part II.—Present Attack.

8. If the patient has been charged with committing any crime specify—
 - (i) the nature of crime, attaching a copy of the first information report to the police ;
 - (ii) the detailed circumstances under which it was committed, with special reference to—
 - (a) absence or inadequacy of motive.
 - (b) the conduct of the supposed lunatic before, during and after commission of the crime,
 - (c) any previous history of insanity and especially of similar symptoms.
9. Reason for suspecting insanity.

10. Supposed exciting cause or causes of present attack, and date.
11. Duration of present attack.
12. Present behaviour and demeanour before—
 - (a) the Police and
 - (b) the Magistrate or other Committing Officer.

Part III.—Previous History and Habits.

13. State—
 - (a) whether any member of the patient's family has been or is affected with insanity, and, if so, give details as far as possible;
 - (b) whether the patient has experienced—
 - (i) loss of property and, if so, give details with dates,
 - (ii) loss of relatives and, if so, give details with dates,
 - (iii) family troubles or disappointment, or anxiety and, if so, when, with whom and under what circumstances,
 - (iv) any cause for—
 - (a) grief,
 - (b) shame,
 - (c) shock or fright,
 - (d) any other strong emotional experience, such as those resulting from over-work or self-abuse ;
 - (c) whether the patient has had—
 - (i) ill-health (specify nature of illness and date) ;

- (ii) delirium with fever during sickness or after exposure to glare or sun (give details with date) ;
- (iii) insanity at or after any epochal period or condition of life ;
- (d) whether the patient has a history of —
 - (i) fits,
 - (ii) faintness,
 - (iii) sudden and temporary forgetfulness or absent-mindedness,
 - (iv) violent and unreasonable fits of temper (give dates and note whether there are scars on the face on account of falls during fits, etc.) ;
- (e) (i) whether he is addicted to any spirits or drugs,
- (ii) if so, for how long has he been so addicted, and
- (iii) what is the name of the spirit or drug and the quantity habitually taken ;
- (f) whether he is a member of any political or religious society.

14. State—

- (a) whether the patient has had any exaltation or depression or excitement (specify cause or causes and dates) ;
- (b) whether the patient has at any time exhibited suicidal symptoms (give full description of any such attempts with dates) ;
- (c) whether the patient has at any time exhibited symptoms of being dangerous to others. (Give full descriptions of any such symptoms with dates, and say whether such symptoms occurred in relation to fits or faintness of which the patient has been unaware.)

15. State—

(a) whether the patient has had previous attacks of insanity and, if so,

(b) number, duration and nature of such previous attacks ;

(c) age (if known) at onset of first of these attacks.

16. Signature and rank of the Investigating Police Officer.

Part IV.

17. Whether the Committing Officer has any more information from the Police or relatives or friends, contradicting or amplifying the answers to the preceding queries.

B.—QUESTIONS TO BE ANSWERED BY MEDICAL OFFICER.

1. State of bodily health. Give details as to general health, abnormality of features or development, and presence of tubercular disease.

2. Any discharge from urethra, any bubo or any rash over body with sore-throat or sore on the private parts.

3. Whether subject to epilepsy, or other disease.

4. Whether suicidal, and, if so, reasons for classing him as such.

5. Whether dangerous to others, and, if so, reasons for classing him as such.

6. Supposed cause of insanity.

7. Symptoms exhibited.

Dated the

Medical Officer.
Magistrate or Judge.

859. The following form must be used on an application for the discharge of a lunatic under section 33 of the Lunacy Act :—

Form of Medical History Sheet to be sent to the Government with the Visitor's recommendations regarding criminal lunatics, or to the Superintendent of a Jail on the transfer of a lunatic.

(1—13 to be filled in by the Superintendent of the Asylum : 14 to be filled in by the Magistrate of the district to which the lunatic belongs.)

1. Name and sex.
2. Crime.
3. Present age.
4. Physical health.
5. Probable cause of insanity.
6. Type of insanity.
7. Duration of insanity and has it been continuous ? giving dates.
8. Has he at any time shown aggressive symptoms ?
9. If so, when and what kind ?
10. If reported sane, how long since last manifestation of insanity ?
11. Is he subject to relapses ? If so, give dates.
12. Is he capable (a) of taking care of himself, (b) of earning his livelihood ?
13. How has he been employed while in asylum ?
14. If security is obtainable, its nature and the social position and character of the sureties.

9. Myanmar Excise Act

860. The powers and duties assigned to Excise Officers under section 56 of the Act shall be exercised within their respective jurisdiction by Police Officers of and above the rank of Head Constable [see Excise Department (Ministry of Forests) Notification No. 35, dated the 25th November 1934, reproduced under heading F at page 36, Burma Excise Manual, 1945.]

Ex-officio Excise
Officers

861. The powers and duties assigned to Excise Officers under section 23, 53 (a) and (b), 54 and 56 shall be exercised within their charges by headmen of village-tracts and wards [*see* Excise Department (Ministry of Forests) Notification No. 35, dated the 25th November 1934, reproduced under heading F at page 36, Burma Excise Manual, 1945.]

62. 862. No Magistrate of the third class who is not specially empowered
 Jurisdiction of by the District Magistrate in this behalf shall take
 Magistrates. cognizance of or try any offence under the Act.

63. No Magistrate shall take cognizance of an offence punishable (a) under section 39, section 40 or section 41 except on the complaint or report of the collector or of an Excise Officer authorised by him in this behalf ; or (b) under any other section of the Act, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police Officer.

Except with the special sanction of the President of the Union, no Magistrate shall take cognizance of any offence punishable under the Act, unless the prosecution is instituted within six months after the date on which the offence is alleged to have been committed.

2. 863. (1) In trials of offences in respect of alcoholic liquor the record
 Kind and Quantity must show that the liquor is one of the kinds
 of Liquor. specified in section 2 (a) and (b) of the Act or in
 the Notifications * under the Act. Much
 inconvenience is caused when the liquor is described merely as fermented liquor. The kind of liquor should also be noted in the weekly and monthly statements.

(2) When the question whether an offence has been committed or not turns on the quantity of liquor found, the quantity should be stated in measures prescribed in Excise Department Notification No. 61, dated the 14th June 1928, as subsequently amended.

* *See* Notifications J and K at pages 42 and 43, Burma Excise Manual.

864. (1) *Tari* is defined in section 2 (r) of the Burma Excise Act, as the sap or juice whether fermented or unfermented of any kind of palm tree. Unfermented *tari* is included in the term 'alcoholic liquor' as defined in section 2 (a) of the Act and 'alcoholic liquor' is

The Law relating
to offences
concerning *tari*.

included in the term 'excisable article' [*vide* section 2 (f) of the Act].

(2) Under Financial Department Notification No. 72, dated 18th September 1917, as amended by Excise Department Notification No. 37, dated 8th November 1923, which are reproduced at page 45, Burma Excise Manual, *throughout the whole of Burma tari* is exempt from the provisions of section 12 of the Burma Excise Act. Consequently in any part of Burma *tari* may be collected or manufactured without a license, and therefore a conviction under section 37 of the Excise Act in respect of *tari* cannot be had under any circumstances.

(3) Furthermore, under the above mentioned Notifications, in *Upper Burma tari* is exempt from all the provisions of the Burma Excise Act in places outside a radius of five miles from a licensed *tari* shop. Consequently in Upper Burma, in the case of any offence in respect of *tari*, the fact that the offence was committed within a distance of five miles from a licensed *tari* shop is an essential ingredient of the offence and therefore this fact must be included in the particulars of the offence stated to the accused and must be proved at the trial. Unless this is done the conviction will be bad.

(4) In Lower Burma, and subject to the restrictions in sub-paragraph (3) in Upper Burma, a conviction under section 30 (a) of the Burma Excise Act for the possession of *tari* can be had if the quantity which may be lawfully possessed in accordance with Financial Department Notification No. 77, dated the 18th September 1917, as subsequently amended by Excise Department Notifications No. 69, dated the 6th October 1926, No. 83, dated the 10th December 1926, No. 61, dated the 14th June 1928, No. 36, dated the 16th June 1930, No. 14, dated the 22nd April 1933, and No. 15, dated the 17th March 1934, and reproduced at page 49, Burma Excise Manual.

865. (1) The quantities of various excisable articles that a person is entitled to possess are laid down in Financial Department Notification No. 77, dated the 18th September 1917, as subsequently amended.

Distinction between
Sections 30 (a) and 37.

(2) When an accused person is sent up for trial on an allegation that he was in possession of a quantity of any excisable article in excess of the quantity prescribed by this notification, section 30 (a) of the Burma Excise Act is applicable and he should, if found guilty, be convicted of an offence under that section.

(3) Section 37 of the Burma Excise Act more properly applies to a case of possessing of an excisable article in a quantity within the limit prescribed by the abovementioned notification, and for a conviction under that section it is necessary for the prosecution to prove that the accused knew or had reason to believe that the same had been unlawfully imported, transported, manufactured, cultivated, or collected, or that the prescribed duty had not been paid thereon. [See section 44 of the Excise Act.] In stating the particulars of the offence to the accused, under 242 of the Code of Criminal Procedure, the statement must allege such knowledge or belief as the section requires, otherwise a conviction under this section cannot be had.

866. Magistrates should bear in mind when trying cases under the
 Analysis of Exhibits Opium or Excise Acts that the exhibit may not be what it purports to be. Care should therefore be taken to see that, for example, opium is not a composition of *ngapi* and other substances, that cocaine is not sulphate of magnesium, and that *tari* is not composed of anything but the sap of any kind of palm tree. Even when the accused pleads guilty to the charge, Magistrates should, when they have any doubt, ascertain from the Civil Surgeon or the Chemical Examiner what the composition of the exhibit really is.

867. The following general directions are issued for the guidance of
 Sentences Magistrates in passing sentence on persons convicted of offences under the Excise and Opium

Laws :—

(1) In the cases of persons convicted for the possession of a small quantity of liquor, or *gania*, apparently for their own consumption, a fine, graduated according to the quantity possessed, is ordinarily a sufficient punishment.

(2) Where from the large quantity of liquor or drugs seized, or from the possession of implements of manufacture, or from other circumstances of the case, it may reasonably be inferred that the offender is engaged in an illicit traffic in liquor or drugs, Magistrates should consider whether the appropriate punishment is a fine proportionate to the probable profits of the trade with or without imprisonment.

(3) (a) In cocaine and morphia cases a sentence of fine only is usually inadequate. In cases under section 31 of the Burma Excise Act, Magistrates should note that imprisonment is now imperative—section 2 of the Burma Excise (Amendment) Act, 1954 (Act XL of 1954).

(b) In cases of conviction for the import, possession, or sale of cocaine really deterrent sentences should be inflicted. As it is retailed to consumers in quantities varying from the one thirty-second part of a grain to a grain, there being 480 grains in an ounce, the profits made by illicit vendors are not less than K 50 an ounce, and unless measures are taken to make those engaged in the illicit traffic of the drug realize that the punishment inflicted will in all probability be one of imprisonment, no deterrent effect will be produced.

(4) Excise cases from an exception to general principle of the undesirability of passing sentences of imprisonment of three months or less.

(5) Regarding sentences in opium cases, *see* section 9 (1) (2) with proviso thereto, and sections 9A, 9B, 9D, 9E of the Act.

(6) In awarding imprisonment in default of payment of fine Magistrates must remember the restrictions imposed by sections 64 to 67 of the Penal Code. *See* paragraphs 683 to 685.

868. Confiscated cocaine including all drugs, synthetic or other, having
 Confiscated Drugs. a like physiological effect to that of cocaine which
 has been manufactured by recognized makers and
 is contained in intact phials, or which been examined previous to
 confiscation by the Chemical Examiner to Government and has been
 passed by him as fit for use and the phials of which have been resealed
 by the Chemical Examiner, shall be sent by the confiscating Court to the
 Collector of Rangoon. Any confiscated cocaine which is not fit for
 despatch to the Collector of Rangoon according to the above, shall be
 destroyed by the confiscating Court. (*Cf.*, Excise Directions 184 and
 185, pages 206 and 207, Burma Excise Manual.)

869. (1) The present Excise Act does not authorize Magistrates to
 Rewards grant rewards out of fines. In order to enable the
 Collector to take action as regards rewards, Magistrates are required to submit to him for information all completed proceedings in enquiries and trials under the Excise, Opium and the Dangerous Drugs Act. The Record will be submitted through the Superintendent of Excise. (See Direction 59 at page 159, Burma Excise Manual.)

(2) In order that there may be as little delay as possible in paying rewards in cases in which appealable sentences are passed, the Magistrate should in every such case warn the convict that if he wishes to appeal he should apply for a copy of the judgment very promptly, otherwise there may be delay in furnishing it. If a copy is applied for, the record should not be sent to the Collector, until the appeal has been disposed of. If an application for a copy is not received within ten days from date of sentence, the record should be sent to the Collector on the eleventh day.

In cases in which non-appealable sentences are passed, the record should be sent without delay after sentence is passed.

10. The Inland Steam Vessels Act.

870. The following instructions prescribing the procedure to be followed in Burma by Courts making investigations under section 33 of the Inland Steam Vessels Act are published in Marine and Commerce Department Notification No. 14, dated the 21st March 1930 :—

Instructions for the guidance of Courts investigating casualties under the Inland Steam Vessels Act.

1. When a Court appointed or directed by the President of the Union to make investigations under section 33 of the Inland Steam Vessels Act has assembled, the Magistrate, who should be the Presiding Officer of the Court, should open the proceedings by reading the statement of the case and the orders appointing the members of the Court, directing them to make the investigation, and fixing the place for making the same.

He should also read a copy of any notices of investigation that may have been issued by the President of the Union.

2. The Government and any person upon whom a notice of investigation has been served, shall be deemed to be parties to the proceedings; and any other person may be permitted by the Court to appear at the investigation and become a party to the proceedings.

3. At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom notices of investigation have been served, or any of them, are present or not.

4. The proceedings in the investigation should commence with the production and examination of witnesses, by the representative of Government. These witnesses, after examination on behalf of the Government, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined by the representative of Government.

5. Every witness so called shall be sworn or affirmed, and his evidence taken down by the Presiding Officer in writing.

6. When the examination of the witnesses produced by him has been concluded, the representative of Government shall state in open Court the questions in reference to the casualty and the conduct of the certificated officers or other persons connected therewith, upon which the opinion of the Court is desired. The Court shall record these questions.

In framing the questions for the opinion of the Court the representative of Government may make such modifications in additions to, or omissions from, the questions in the notice of investigation as, having regard to the evidence which has been given, he may think fit.

7. If the Court considers it probable that any certificate should be dealt with, an adjournment should be granted and the attendance of two persons having experience in the conditions of inland navigation secured to act as assessors.

Before such an adjournment is granted the Court shall ascertain whether the holder of the certificate has received a copy of the statement of the case. If he has, the fact should be recorded on the proceedings; if he has not, a copy should be delivered to him forthwith and the fact duly recorded.

In other investigations, which do not involve the cancelling or suspension of a certificate, the Court may, in its direction, appoint as assessor a person conversant with maritime affairs, and may adjourn for the purpose of obtaining his attendance.

8. When any investigation involves, or appears likely to involve, any question as to the cancelling or suspension of the certificate of an engineer, one at least of the assessors should be a mercantile marine engineer holding a first class certificate of competency, and actually employed in his calling.

9. After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon, and determine, the questions so stated. Each party to the investigation will be entitled to address the Court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined, and re-examined in such order as the Court may direct. The representative of Government may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the representative of Government.

10. When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties who desire to do so may address the Court upon the evidence, and the representative of Government may address the Court upon the whole case.

11. Upon the conclusion of the investigation the Court shall deliver no judgment, but shall transmit to the President of the Union the proceedings in the case together with its finding and recommendation thereon, and the opinions of the assessors, if anywhere appointed. The assessors should not sign the finding, but should deliver their opinions in writing to be recorded on the proceedings.

11. Maintenance Orders Enforcement Act.

871. x x x x x x x x x x x x x x x x x x x x x x
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Deleted by Law No.1/92

12. Myanmar Merchant Shipping Act.

872. Magistrates empowered under section 249 of the Burma Merchant Shipping Act, when making formal investigations, should on all occasions observe the instructions set out below as far as possible, but these instructions should not be treated as a rigid or complete code of procedure.

Instructions to be observed in the conduct of investigations into shipping casualties.

(1) When a formal investigation has been applied for, the officer appointed under section 246 (3) of the Burma Merchant Shipping Act should cause a notice, to be called a notice of investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who in his opinion ought to be served with such notice.

(Amendment - Appendix VIII)

The notice should contain a statement of the questions which, on the information then in possession of the said officer, he intends to raise on the hearing of the investigation, and should be in the form annexed, with such variations as circumstances may require. The said officer may, at any time before the hearing of the investigation, by a subsequent notice, amend, add to, or omit any of the questions specified in the notice of investigation.

(2) Section 254 (1) of the Burma Merchant Shipping Act provides that when any investigation involves, or appears likely to involve, any question as to the cancellation or suspension of the certificate of a master, mate or engineer, two of the assessors shall be persons having experience in the merchant service. The opinions of the assessors on all the questions put to the Court together with, if necessary, their reasons for those opinions should be delivered in writing to the Court and should be recorded in the proceedings.

(3) The officer on whose application the investigation is undertaken, and any person upon whom a notice of investigation has been served, should be deemed to be parties to the proceedings; and any other person may be permitted by the Court to appear at the investigation and become a party to the proceeding.

(4) At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom notices of investigation have been served, or any of them, are present or not.

(5) The proceedings in the investigation should commence with the production and examination of witnesses by the representative of the Government. These witnesses, after examination on behalf of the Government, may be cross examined by the parties in such order as the Court may direct, and may then be re-examined by the representative of the Government.

(6) When the examination of the witnesses produced by him has been concluded, the representative of the Government should state in open Court the questions in reference to the casualty and the conduct of the certificated officers or other persons connected therewith, upon which the opinion of the Court is desired.

In framing the questions for the opinion of the Court the representative of the Government may make such modifications in, additions to, or omissions from, the questions in the notice of investigation as, having regard to the evidence which has been given, he may think fit.

(7) After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon and determine, the questions so stated. Each party to the investigation will be entitled to address the Court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties will be heard and their witnesses examined, cross-examined, and re-examined in such order as the Court may direct. The representative of the Government may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the representative of the Government.

(8) When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties who desire to do so may address the Court upon the evidence, and the representative of the Government may address the Court upon the whole case.

(9) Where the cancellation or suspension of an officer's certificate is not involved, the Court need not, unless for any reason it sees fit so to do, deliver its decision in open Court, but may send or deliver to the parties a copy of the report required by section 257 of the Burma Merchant Shipping Act to be transmitted to the President of the Union.

(10) Where the cancellation or suspension of an officer's certificate is involved, the Court should deliver its decision in open Court, and should send or deliver to the parties a copy of the report required by section 257 of the Act to be transmitted to the President of the Union.

(11) Where the cancellation or suspension of an officer's certificate granted in the United Kingdom is involved, the Court of a Magistrate having jurisdiction under section 249 of the Burma Merchant Shipping Act, should be held to be 'a Court of summary jurisdiction' for the

purpose of the proviso in section 470 (1)(a) of the Merchant Shipping Act, [read with section 478 (5) of that Act and section 258 of the Burma Merchant Shipping Act], with the result that the Court referred to should not cancel or suspend a certificate of the kind in question unless one at least of the assessors concurs in the finding of the Court.

(12) The representative of the Government should bring to the notice of the Court the desirability of the Court stating its finding in explicit terms and not in the form of a recommendation to the President of the Union and, in any case, where the Court is of the opinion that a Certificate of Competency should be dealt with or a censure should be imposed, of the Court dealing with the matter direct under section 264 of the Burma Merchant Shipping Act.

873. Forms in connection with the above rules are to be found in Appendix IV.

13. Myanmar Salt Act †

874.	x	x	x	x	x	x	x	x
	x	x	x	x	x	x	x	x

(Repealed by Law No.6, 1992, Salt Enterprise Law)

†Law No.6, 1992, Salt Enterprise Law Appendix IX

14. Factories Act.

875. (1) No Court inferior to that of a Magistrate of the first class can try any offence under this Act or any rule or order made thereunder other than an offence under section 66 or section 67. Furthermore no prosecution under the Act, except a prosecution under section 66 can be instituted except by or with the previous sanction of the Inspector. For limitation of prosecutions, *see* section 75 of the Act.

(2) The District Magistrate, on receipt of a complaint in writing from one of the full-time Inspectors of facts which constitute an offence under the Factories Act should ordinarily take cognizance under section 190 (1) (a) of the Code of Criminal Procedure without examining the Inspector [*vide* section 200, proviso (a) of the Code] and transfer the case for trial to an experienced Magistrate invested either with first class or Special Powers, bearing in mind that so far as possible all offences under the Factories Act in a district should be heard by the same Magistrate.

(3) The Magistrate to whom the case had been transferred should, without examining the Inspector [*vide* section 200, proviso (aa) of the Code of Criminal Procedure] in the first instance procure the attendance of the accused and deal with him under the provisions of sections 242 and 243 of the Code of Criminal Procedure. Only in cases where the Magistrate finds that it is necessary to proceed under section 244 of the Code should he require the attendance of the Inspector, and for this purpose the accused should be bound over for appearance on another day. In fixing a date for such appearance it should be remembered that the Inspector may be away from Headquarters and ample time should be allowed. All the other prosecution witnesses should be summoned for that day and, if possible, the defence witnesses also.

(4) The Magistrate trying the case may usually find it convenient to allow the Inspector, if present, to conduct the prosecution [section 495 (1), Code of Criminal Procedure].

(5) In cases in which the Magistrate intends to visit the local due notice should be given to the Inspector and the accused (*vide* section 53⁽¹⁾B of the Code of Criminal Procedure).

(6) In assessing the penalty in cases of conviction Magistrates empowered to try cases under the Act should bear in mind that the Factories Act applies to all factories and that those employers who comply with the requirements thereof would be subject to a handicap if other employers are allowed to contravene the provisions of the Act and escape with too light a penalty.

(7) In cases where it appears that the accused has within the last two years been convicted of an offence punishable under clauses (b) to (f) of section 60 of the Act the provisions of section 61 which provide for an enhanced penalty in certain cases after previous conviction should be borne in mind. In providing previous convictions the provisions of section 511 of the Code of Criminal Procedure should be followed.