

LEGAL STUDY ON SUMMARY TRIAL
UNDER SECTION 173 OF THE
CRIMINAL PROCEDURE CODE

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FOR MY BELOVED PARENTS....
ABAH & MAK

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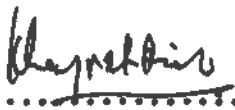
The completion of the project paper has left me in great debt to many people. I take this opportunity to repay a small part of that debt. I am especially indebted to my Supervisor, Mr. Valentine Emmanuel whose quiet encouragement and invaluable suggestions vastly improved the standard of this paper. A special thanks also goes to brother Badrul, from whom I derived not only the benefit of a good academic soon but also of a good friend. Without his strong supports this study would not have begun.

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P R E F A C E

In this study, the main objective of the writer has been to examine the procedure in summary trials in the Magistrate's Court. To this extent, the writer hopes that this study has at least been a partial success and may lead to a better understanding of the summary trial procedure applied in the Magistrate's Courts at present. Indeed, the writer himself has benefited immensely from this study.

The writer would at this stage like to take the opportunity to record his gratitude and appreciation to the Magistrates and lawyers who kindly consented to give interviews and to relate their experiences on the Bench; all others who have helped in one way or another in the course of this study.



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CHAPTER I

INTRODUCTION

A. Objective of the Study

The study of criminal procedure is very important because without it, criminal law would become impotent, however comprehensive and just it might be. This is because criminal procedure provides the machinery for the implementation of the criminal law. At the same time, criminal procedure exists to protect an individual from unjust persecution and unjustified punishment. Justice would demand thus that criminal procedure works properly in protecting both society and the individual.

Criminal procedure in its protection of the individual spells much of the difference between rule by law and rule by whim or caprice. Equal justice under the law is only ensured with steadfast adherence to the strict procedural safeguards in the law. Nevertheless, rules of procedure must be understood in its relation to the achievement of justice, for the law lives not merely in rules inscribed in statutes or case-law but also in its effects upon the ordinary person.

With over 90% of the criminal cases that reach our Courts annually being disposed of in the Magistrate's Courts, it is at once realised that the study of criminal procedure in our Magistrate's Courts becomes very important indeed. Unlike the position in England and India, all criminal trials¹ in the Magistrate's Courts in West Malaysia² are at present conducted by summary trial procedure as laid down in Chapter XIX

¹This is as regards trials proper. Preliminary inquiries fall under Chapter XVII of the same Code.

²By virtue of A324/76, the Code now applies to East Malaysia as well. See, *Ha Jong Ru v. P.P.* [1980] 2 MLJ 256 on this point.

of the Criminal Procedure Code.³ It can indeed be said that it is primarily through summary trials that criminal justice is obtained in this country.

Hence, it is essential to the administration of criminal justice in our Malaysian courts that there should be a proper understanding of the provisions on summary trial procedure. Unfortunately, at present there is no book dealing in summary trial procedure in our Malaysian courts. Indeed, even for the whole of our laws on criminal procedure, there exists at present only one book which is rather old, though it is still regarded as an authority on criminal procedure in Malaysia.⁴

This study thus seeks somewhat to fill in that gap. The basic underlying aim of this study is to examine the procedure in summary trials in our Magistrate's Courts, with particular reference to section 173 of the Criminal Procedure Code. The writer has tried to outline all the major principles in summary trial procedure as expounded through the many cases on this aspect. Wherever necessary, the writer has included discussions on other relevant sections of the Code or other laws.

B. Scope of the Study

Throughout the whole Criminal Procedure Code, there is no definition of a summary trial. For the purposes of this study, reference to summary trials or summary trial procedure will thus be in reference to trials under Chapter XIX of the Code, which provides generally for summary trials by Magistrates. Thus, preliminary inquiries and inquests by Magistrates or Juvenile Court trials⁵ by Magistrates sitting as

³F.M.S. Cap. 6

⁴Mallal's Criminal Procedure Code, 1957, 4th Edition.

⁵Under the Juvenile Courts Act, 1947. UTM

Presidents are not included.

Basically, this study covers only trials in the Magistrate's Courts in West Malaysia. Trials in the Sessions Courts are not covered, though it has been held that section 173 and summary trial procedure are applicable to the Sessions Courts as well.⁶ Also Magistrate's Courts in East Malaysia are not covered,⁷ even though the Code has been extended there.⁸

The subject matter of this study is limited mainly to the case-law on the various provisions on summary trials in the Magistrate's Courts, with particular reference to section 173. The writer will be mainly discussing the case-law on section 173 and other provisions on summary trials.

Throughout this study, references to the Code are references to the Criminal Procedure Code,⁹ unless otherwise stated.

⁶Tengku Abdul Aziz v. Public Prosecutor [1951] MLJ 185, where it was held that summary trial procedure applied to Sessions Court also.

⁷Nevertheless, evenso, the study would be applicable to both Sessions Courts and East Malaysian Magistrate's Courts as well. The only difference would be in terms of the summary jurisdiction of these Courts.

⁸Criminal Procedure Code (Amendment and Extension) Act, A324/76. w.e.f. 10.1.1976.

⁹F.M.S. Cap. 6.

CHAPTER II
HISTORICAL BACKGROUND

"The history of liberty has largely been the history of the observance of procedural safeguards."

Felix Frankfurter, J.

The history of summary trials may properly be traced back to the English "Summary Jurisdiction Act, 1848" whereby summary trials were introduced as a statutory exception to the general procedure of trial by jury.¹ But the history of summary trial procedure in this Chapter will only be mentioned as from the date when summary trials were first introduced into this country. Hence, the discussion will be based on the various Criminal Procedure Codes which have been enacted in succession from 1870² till the present day Code. The history can be divided into two parts. First, a brief history of the Criminal Procedure Code will be given to enable the reader to get a better perspective before he reads the second part which deals with summary trials generally as provided for under Chapter XIX.

A. The Criminal Procedure Code

The history of the law relating to criminal procedure in West Malaysia can properly be traced back to the 1900 Criminal Procedure Codes of the four Federated Malay States, i.e. Perak, Selangor, Negri Sembilan and Pahang.

¹See, Halsbury's Statutes of England, Second Edition, Volume 14 - Magistrates.

²Criminal Procedure Ordinance V, 1870.

Prior to 1900, certain Straits Settlements Ordinances had been applied in the Malay States. The first of these Ordinances was the Criminal Procedure Act of 1852.³ Subsequently, in 1870, the Criminal Procedure Ordinance V of 1870 was passed. This Ordinance V of 1870 followed in the main English rules on criminal procedure, but was soon found to be impracticable and unsuitable for the Straits Settlements, mainly because the Penal Code of 1870 had done away with the English classification of crimes into felonies and misdemeanours. Thus, barely 3 years later, the Criminal Procedure Ordinance VI of 1873 was passed. Basically, the 1873 Ordinance VI was nothing more than an enactment of the Indian law on criminal procedure, and marked an abandonment of the English law as contained in the 1870 Ordinance V. Since the Malay States at this time had no criminal procedure code of their own, the 1873 Ordinance VI was applied in the Malay States as well, until in 1900 the four states each got their own codes. In 1902 and 1903, further Criminal Procedure Codes were enacted, repealing the 1900 Codes.

In 1927, the Criminal Procedure Code as we know it today was passed.⁴ This 1927 Code was basically a re-enactment of the 1902 and 1903 Codes, with suitable amendments. In the main, the 1927 Code followed very closely the Indian law on criminal procedure, but section 5 expressly provided that:

"As regards matters of criminal procedure for which no special provision may have been made by this Code or by any other law for the time being in force the law relating to criminal procedure for the time being

³Act XVI, 1852, Indian statute which was applied in the Straits Settlements.

⁴F.M.S. Cap. 6.

in force in the Colony (of the Straits Settlements) shall be applied so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto."

The result of section 5, as it was then worded, was that in the event of a lacunae in the Code, English law would become applicable, since the then law on criminal procedure in the Straits Settlements provided for the application of English law in the event of a lacunae in the local law.⁵ This was an important area where the local criminal procedure differed from the Indian position. In 1967, section 5 was amended by substituting the words "Republic of Singapore" for the word "Colony".⁶ Subsequently, in 1976, the word "England" was substituted for the words "Republic of Singapore."⁷ This change was made necessary by virtue of the fact that extensive and radical changes had been made to the Singapore Criminal Procedure Code which could have affected adversely the Malaysian Code. Thus, section 5 as it stands today provides directly for the application of English law in case of a lacunae in the local law on criminal procedure, where previously it had provided for such application in an indirect way. But it should be noted that application of English law under section 5 should not "conflict or be inconsistent" with the local code.⁸

⁵See, section 5, Criminal Procedure Code, Straits Settlements, Cap. 21, and section 5, Singapore Criminal Procedure Code, Cap. 132.

⁶P.U.205/67, w.e.f. 1.6.1967.

⁷A324/76, w.e.f. 10.1.1976.

⁸C.P. Ansell v. R (1952) MLJ 143, H/Ct. - English law held as not applicable for being inconsistent with the local law.

The 1927 Criminal Procedure Code as first enacted was only applicable to the Federated Malay States of Perak, Selangor, Negeri Sembilan and Pahang. But in 1947, it was amended to extend its application to the Unfederated Malay States of Johor, Kedah, Kelantan, Perlis and Trengganu as well.⁹

In 1976, by virtue of amendment, the Criminal Procedure Code was extended to the States of Sabah, Sarawak, Penang and Malacca.¹⁰ Prior to this, the law applicable in Penang and Malacca was the Criminal Procedure Code, Chapter 132 of 1955.

B. Summary Trials under Chapter XIX

Under the 1902 Code, the law relating to summary trials by magistrates was contained in Chapter XIX. Summary trial procedure fell under section 170, which comprised a total of eleven subsections. Section 171 dealt with the right of reply, section 172 with the power to award compensation, and section 173 with the recording of particulars. Unlike the present day Code, the transfer of cases fell under section 174 which formed Chapter XX by itself.¹¹

Under the 1927 Code as first enacted, Chapter XIX contained a total of five sections initially, but in 1936, an amendment was made to include section 173A.¹²

⁹Criminal Procedure (Amendment) Ordinance, 1947.

¹⁰Criminal Procedure (Amendment) Act 1976, i.e., A324/76, w.e.f. 10.1.1976.

¹¹See, Appendix A.

¹²F.M.S. Enactment 19, 1936, w.e.f. 29.7.1936.

Thus, unlike the 1902 Code on which it which it was based, the present Chapter XIX now contains six sections. Section 173 as it now stands contains fifteen subsections, as compared to eleven in the old 1902 Code. Section 173A deals with the power to discharge conditionally or unconditionally, and section 174 deals with addresses. Section 175 deals with the power to award compensation, and section 176 deals with the recording of particulars. Finally, unlike the 1902 Code, the transfer of cases under section 177 is included under Chapter XIX as well.

A comparison of the old and new Chapter XIX shows the extent to which progress has been made in laying down a more detailed and elaborate summary trial procedure under that Chapter itself.¹³ Whether this is for the better or worse is a moot question, keeping in mind the fact that a summary trial is meant to be one in which justice is to be speedily dispensed, and balancing it with another fact, i.e., haste without justice is equally undesirable.

¹³See, Table 1.