

## PART B.—RECORD OF EVIDENCE IN THE ABSENCE OF THE ACCUSED.

The provisions of the Code of Criminal Procedure in regard to the taking and recording of evidence in the absence of accused persons are important and should not be overlooked.

Introductory.

2. Section 512(1) provides that whenever it is proved that an accused person has absconded and there is no immediate prospect of arresting him, any Court competent to try or commit such person for trial for the offence complained of may, in his absence, examine the witnesses produced for the prosecution and record their depositions, and such depositions may, on the arrest of the accused person, be used in evidence against him, if the deponent is dead or is incapable of giving evidence, or his attendance cannot be conveniently procured. It is also to be noted in connection with this that section 164 enables a Magistrate to record, in the same manner as evidence, any statement regarding an offence made by an accused person whomsoever it may implicate.

Evidence recorded in evidence of the absconding accused may be used against him in certain cases.

3. Proceedings under section 512 should commence by evidence being taken and recorded (1) that the accused person has absconded, and (2) that due pursuit having been made there is no immediate prospect of arresting him.

Proceedings under Section 512.

4. In cases where the crime has terminated fatally, or where medical evidence would ordinarily be required at the trial the evidence of the medical officer as to the cause of death or as to the injuries inflicted, should invariably be recorded.

Medical evidence should be recorded in some cases.

5. In cases where the crime has been committed by some persons unknown and the offence is punishable with death or imprisonment for life, the High Court may order an inquiry similar to that under section 512 (1) of the Code and statements recorded in that inquiry can be used as evidence against the offender subsequently discovered.

Confession by accused implicating an absconder cannot be used after the execution of the confession case.

6. It should be remembered that confessions by accused persons, who have been executed, implicating an absconder cannot, be used after the execution of the confessor against the absconder, when the latter is found and placed upon his trial, as he is not being tried in a joint trial with the other, and has had no opportunity to cross-examine. (*See* section 30 of the Indian Evidence Act, 1872).